District of Columbia Code

1967 EDITION ☆ SUPPLEMENT IV

1971

TITLES 1–49

TABLES AND INDEX

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DISTRICT OF COLUMBIA CODE

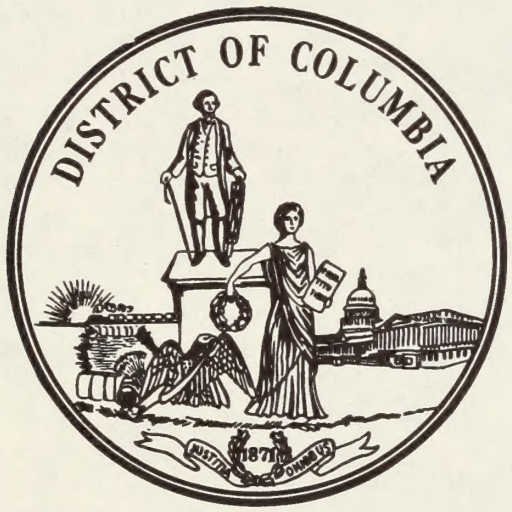
1967 EDITION

CUMULATIVE SUPPLEMENT IV

LAWS—January 10, 1967, to January 13, 1971

NOTES TO DECISIONS—January 1, 1967, to December 31, 1970

**Prepared and Published Under Authority of Sections 202, 203 of Title 1, United States Code,
by the Committee on the Judiciary of the House of Representatives**



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COMMITTEE ON THE JUDICIARY

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TITLES OF DISTRICT OF COLUMBIA CODE

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PREFACE

This fourth cumulative supplement to the 1967 edition of the District of Columbia Code, containing the additions to and changes in the general and permanent laws relating to or in force in the District of Columbia (except such laws as are of application in the District of Columbia by reason of being general and permanent laws of the United States), enacted during the Ninetieth and the Ninety-First Congresses, has been prepared and published by the Committee on the Judiciary of the House of Representatives under authority of Sections 202 and 203 of Title 1, United States Code. This supplement, together with the 1967 edition, contains the laws of the District of Columbia enacted through the end of the Ninety-First Congress.

The 1967 edition of the Code was completely annotated with notes to decisions of the courts affecting the respective sections of the Code. These notes have been brought up to the indicated pages in the following reports:

91 Sup. Ct. 380, 433 F. 2d 1344, 318 F. Supp. 1336, 271 A. 2d 712.

An important and extremely useful improvement introduced for the first time in the first Supplement is a cross-reference note following each section that is referred to in another section, indicating the section that refers to it.

The Committee gratefully acknowledges the assistance of Joseph Fischer, Law Revision Counsel, and Edward F. Willett, Jr., Assistant Law Revision Counsel, of the Committee, and of all others who have helped in the preparation of this supplement.

The Committee again invites suggestions and criticisms by users of the Code.

Emanuel Celler

Chairman, Committee on the Judiciary

Robert W. Kastenmeier

Chairman, Subcommittee No. 3
Committee on the Judiciary

WASHINGTON, D.C.
January 2, 1971

ACTS RELATING TO THE ESTABLISHMENT OF THE DISTRICT OF COLUMBIA AND ITS VARIOUS FORMS OF GOVERNMENTAL ORGANIZATION

REORGANIZATION PLAN NO. 3, 1967

Reorganization Plan No. 3, 1967, effective August 11, 1967, abolished the existing three-commissioner form of government and established in its place a single commissioner and a nine-man council form of government. For details, see the Plan set out in its entirety in the appendix to title 1.

CONSTITUTION OF THE UNITED STATES OF AMERICA

ARTICLE [XXV]

SECTION 1. In case of the removal of the President from office or of his death or resignation, the Vice President shall become President.

SEC. 2. Whenever there is a vacancy in the office of the Vice President, the President shall nominate a Vice President who shall take office upon confirmation by a majority vote of both Houses of Congress.

SEC. 3. Whenever the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that he is unable to discharge the powers and duties of his office, and until he transmits to them a written declaration to the contrary, such powers and duties shall be discharged by the Vice President as Acting President.

SEC. 4. Whenever the Vice President and a majority of either the principal officers of the executive departments or of such other body as Congress may by law provide, transmit to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office, the Vice President shall immediately assume the powers and duties of the office as Acting President.

Thereafter, when the President transmits to the President pro tempore of the Senate and the Speaker of the House of Representatives his written declaration that no inability exists, he shall resume the powers and duties of his office unless the Vice President and a majority of either the principal officers of the executive department or of such other body as Congress may by law provide, transmit within four days to the President pro tempore of the Senate and the Speaker of the House of Representatives their written declaration that the President is unable to discharge the powers and duties of his office. Thereupon Congress shall decide the issue, assembling within forty-eight hours for that purpose if not in session. If the Congress, within twenty-one days after receipt of the latter written declaration, or, if Congress is not in session, within twenty-one days after Congress is required to assemble, determines by two-thirds vote of both Houses that the President is unable to discharge the powers and duties of his office, the Vice President shall continue to discharge the same as Acting President; otherwise, the President shall resume the powers and duties of his office.

PROPOSAL AND RATIFICATION

This amendment was proposed by the Eighty-ninth Congress by Senate Joint Resolution No. 1, which was approved by the Senate on February 19, 1965, and by the House of Representatives, in amended form, on April 13, 1965. The House of Representatives agreed to a Conference Report on June 30, 1965, and the Senate agreed to the Conference Report on July 6, 1965. It was declared by the Administrator of General Services on February 23, 1967, to have been ratified.

This amendment was ratified by the following States: Nebraska, July 12, 1965; Wisconsin, July 13, 1965; Oklahoma, July 16, 1965; Massachusetts, August 9, 1965; Pennsylvania, August 18, 1965; Kentucky, September 15, 1965; Arizona, September 22, 1965; Michigan, October 5, 1965; Indiana, October 20, 1965; California, October 21, 1965; Arkansas, November 4, 1965; New Jersey, November 29, 1965; Delaware, December 7, 1965; Utah, January 17, 1966; West Virginia, January 20, 1966; Maine, January 24, 1966; Rhode Island, January 28, 1966; Colorado, February 3, 1966; New Mexico, February 3, 1966; Kansas, February 8, 1966; Vermont, February 10, 1966; Alaska, February 18, 1966; Idaho, March 2, 1966; Hawaii, March 3, 1966; Virginia, March 8, 1966; Mississippi, March 10, 1966; New York, March 14, 1966; Maryland, March 23, 1966; Missouri, March 30, 1966; New Hampshire, June 13, 1966; Louisiana, July 5, 1966; Tennessee, January 12, 1967; Wyoming, January 25, 1967; Washington, January 26, 1967; Iowa, January 26, 1967; Oregon, February 2, 1967; Minnesota, February 10, 1967; Nevada, February 10, 1967; Connecticut, February 14, 1967; Montana, February 15, 1967; South Dakota, March 6, 1967; Ohio, March 7, 1967; Alabama, March 14, 1967; North Carolina, March 22, 1967; Illinois, March 22, 1967; Texas, April 25, 1967; Florida, May 25, 1967.

CERTIFICATE OF VALIDITY

Publication of the certifying statement of the Administrator of General Services that the Amendment had become valid was made on February 25, 1967, 32 F.R. 3287.

DISTRICT OF COLUMBIA CODE
1967 Edition

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THE CODE OF THE DISTRICT OF COLUMBIA

PART I

GOVERNMENT OF DISTRICT

TITLE 1—ADMINISTRATION.
TITLE 2—DISTRICT BOARDS AND COMMISSIONS.
TITLE 3—BOARD OF PUBLIC WELFARE.
TITLE 4—POLICE AND FIRE DEPARTMENTS.
TITLE 5—BUILDING RESTRICTIONS AND REGULATIONS.
TITLE 6—HEALTH AND SAFETY.
TITLE 7—HIGHWAYS, STREETS, BRIDGES.
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TEMPORARY COMMISSION ON THE ORGANIZATION OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA

Title I of the act Sept. 22, 1970, Pub. L. 91–405, 84 Stat. 845, provided as follows:

DECLARATION OF POLICY

SECTION 101. It is hereby declared to be the policy of Congress to promote economy, efficiency, and improved service in the transaction of the public business in the departments, bureaus, agencies, boards, commissions, offices, independent establishments, and instrumentalities of the District of Columbia by—

(1) recommending methods and procedures for reducing expenditures to the lowest amount consistent with the efficient performance of essential services, activities, and functions;

(2) eliminating duplication and overlapping of services, activities, and functions;

(3) consolidating services, activities, and functions of a similar nature;

(4) abolishing services, activities, and functions not necessary to the efficient conduct of government;

(5) eliminating nonessential services, functions, and activities which are competitive with private enterprise;

(6) defining responsibilities of officials; and

(7) relocating agencies now responsible directly to the Commissioner of the District of Columbia in departments or other agencies.

ESTABLISHMENT OF THE COMMISSION ON THE ORGANIZATION OF THE GOVERNMENT OF THE DISTRICT OF COLUMBIA

SEC. 102. For the purpose of carrying out the policy set forth in section 101 of this title, there is established a commission to be known as the Commission on the Organization of the Government of the District of Columbia (hereafter in this title referred to as the "Commission").

DUTIES OF THE COMMISSION

SEC. 103. (a) The Commission shall study and investigate the present organization and methods of operation of all departments, bureaus, agencies, boards, commissions, offices, independent establishments, and instrumentalities of the government of the District of Columbia (other than the courts of the District of Columbia) to determine what changes are necessary to accomplish the purposes set forth in section 101 of this title.

(b) The Commission shall submit interim reports at such time, or times, as the Commission deems necessary, shall submit a comprehensive report of its activities and the results of its studies to the Congress within six months after the date of enactment of this Act, and shall submit its final report not later than six months after the filing of its comprehensive report. Upon filing its final report the Commission shall cease to exist. The final report of the Commission may propose such legislative enactments and administrative actions as in its judgment are necessary to carry out its recommendations.

MEMBERSHIP OF COMMISSION

SEC. 104. The Commission shall be composed of twelve members appointed as follows:

(1) Four members shall be appointed by the President of the United States. Two members so appointed shall be from the executive branch of the Federal Government or from the government of the District of Columbia, and two shall be from private life.

(2) Four members shall be appointed jointly by the President of the Senate, the Chairman of the Committee on the District of Columbia of the Senate, and the Chairman of the subcommittee of the Committee on Appropriations of the Senate which has jurisdiction over appropriations for the District of Columbia. Two members so appointed shall be from the Senate, and two shall be from private life.

(3) Four members shall be appointed by the Speaker of the House of Representatives on the advice of the chairman of the Committee on the District of Columbia of the House of Representatives and the chairman of the subcommittee of the Committee on Appropriations which has jurisdiction over appropriations for the District of Columbia. Two members so appointed shall be from the House of Representatives, and two shall be from private life.

The members shall be appointed within thirty days following the date of the enactment of this Act. Any vacancy in the Commission shall be filled in the same manner in which the original appointment was made.

COMPENSATION OF COMMISSION MEMBERS

SEC. 105. (a) Members of the Commission who are Members of the Congress or full-time officers or employees of the United States or the District of Columbia shall receive no additional compensation on account of their service on the Commission. The other members of the Commission shall be entitled to receive the daily equivalent of the rate now or hereafter provided for grade GS–18

of the General Schedule for each day (including travel-time) during which they are engaged in the actual performance of duties vested in the Commission.

(b) While traveling on official business in the performance of services for the Commission, members of the Commission shall be allowed expenses of travel, including per diem instead of subsistence, in accordance with subchapter I of chapter 57 of title 5, United States Code.

ORGANIZATION AND POWERS OF THE COMMISSION

SEC. 106. (a) The Commission shall elect a Chairman and a Vice Chairman from among its members. Seven members of the Commission shall constitute a quorum.

(b) The head of any Federal agency or agency of the District of Columbia is authorized to detail, on a reimbursable basis, any of its personnel to assist in carrying out the duties of the Commission. The Administrator of General Services shall provide financial and administrative support services for the Commission on a reimbursable basis.

(c) The Commission may appoint and fix the compensation of such personnel as it deems advisable. Such personnel may be appointed without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and may be paid without regard to the provisions of chapter 51 and subchapter II of chapter 53 of such title relating to classification and General Schedule pay rates.

(d) The Commission may obtain services of experts in accordance with the provisions of section 3109 of title 5, United States Code.

(e) The Commission, or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title, hold such hearings, sit and act at such times and places, administer such oaths, and require, by subpena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memorandums, papers, and documents as the Commission or such subcommittee or member may deem advisable. Subpenas may be issued under the signature of the Chairman of the Commission, of the chairman of such subcommittee, or of any duly designated member, and may be served by any person designated by the Chairman or by such subcommittee chairman or member. The provisions of sections 102 to 104, inclusive, of the Revised Statutes of the United States (2 U.S.C. 192–194) shall apply in the case of any failure of any witness to comply with any subpena or to testify when summoned under authority of this subsection.

(f) The Commission may secure directly from any department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the District of Columbia information, suggestions, estimates, and statistics for the purpose of this title; and each such department, bureau, agency, board, commission, office, establishment, or instrumentality shall furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request by the Chairman or Vice Chairman.

TRANSFER OF PERSONNEL AND PROPERTY TO NEW DISTRICT OF COLUMBIA GOVERNMENT

Sections 304 and 502 of Reorganization Plan No. 3 of 1967, effective August 11, 1967, and November 3, 1967, respectively, provide:

"SEC. 304. *Transfer of personnel, property, records, and funds.* With respect to personnel, property, records, and unexpended balances of appropriations, allocations and other funds, available or to be made available, relating to functions transferred by the provisions of this reorganization plan, the Commissioner may from time to time effect such transfers between the agencies of the Corporation (including transfers between the Commissioner and any other agency of the Corporation) as he may deem necessary in order to carry out the provisions of this reorganization plan.

"SEC. 502. *Incidental transfers.* (a) The personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the offices of the Board of Commissioners of the District of Columbia or in connection with the offices of the commissioners composing that Board shall be transferred as follows at such time or times as the Director of the Bureau of the Budget shall direct:

"(1) So much thereof as the Director of the Bureau of the Budget shall determine to relate primarily to functions transferred to the District of Columbia Council by the provisions of this reorganization plan shall be transferred to that Council.

"(2) All other thereof shall be transferred to the Commissioner of the District of Columbia.

"(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

"(c) Unless and until other provision is made in pursuance of section 304 of this reorganization plan or by law, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds which are now under the jurisdiction of the Board of Commissioners of the District of Columbia and are not affected by the provisions of subsection (a) of this section shall continue to be attached to or available for the several agencies of the Corporation."

TRANSFER OF FUNCTIONS TO COMMISSIONER

Section 401 of Reorganization Plan No. 3 of 1967, effective November 3, 1967, transferred functions of the Board of Commissioners, including functions of the President of the Board and all functions of each other member of the Board, including the executive power vested therein, to the Commissioner of the District of Columbia, except as provided by other sections of the Reorganization Plan. For provisions establishing the office of Commissioner of the District of Columbia and abolishing the Board of Commissioners, see sections 301 and 503 of the Plan, set out in the appendix to this title.

NOTES TO DECISIONS

Court Orders, as Binding on District's Officers and Employees

The District of Columbia is a municipal corporation, and it is black-letter law that injunctions against a corporation can bind its officers, agents and employees who have notice of the order. *D. Morrow* v. *District of Columbia and In re Alexander, Judge etc.* (1969, 417 F. 2d 728, 135 U.S. App. D.C. 160, rev'g and remanding 243 A. 2d 901).

The police agents of the District of Columbia arrested this defendant, the District's corporation counsel prosecuted the defendant in the name of the District, and the court could properly issue orders against the District regarding the record of defendant's arrest, and the court's order, to be effective, could properly run against the District's Police Department which was given notice of the order. *Id.*

§ 1–103. Commissioners made officers of corporation.

TRANSFER OF FUNCTIONS AS OFFICERS OF THE CORPORATION

Section 405 of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"The functions of the Commissioners of the District of Columbia with respect to being officers of the Corporation under D.C. Code, sec. 1–103 are hereby transferred to the members of the District of Columbia Council and to the Commissioner of the District of Columbia in such manner as to accord with the transfers of functions to the Council and the Commissioner, respectively, as effected by the provisions of the foregoing sections of Part IV of this reorganization plan."

TRANSFER OF FUNCTIONS TO COMMISSIONER

Section 401 of Reorganization Plan No. 3 of 1967, effective November 3, 1967, transferred functions of the Board of Commissioners, including functions of the President of the Board and all functions of each other member of the Board, including the executive power vested therein, to the Commissioner of the District of Columbia, except as provided by other sections of the Reorganization Plan. For provisions establishing the office of Commissioner of the District of Columbia and abolishing the Board of Commissioners, see sections 301 and 503 of the Plan, set out in the appendix to this title.

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1–266. District of Columbia medical assistance program—Standards and criteria for determining eligibility—Definitions.
1–267. Supplementary medical insurance program.

§ 1–201. Appointment of Commissioners.

PRESIDENTIAL EXECUTIVE ORDER 11379

DESIGNATING OFFICIALS TO ACT AS COMMISSIONER OF THE DISTRICT OF COLUMBIA

Ex. Ord. No. 11379, Nov. 8, 1967, 32 F.R. 15625, provided:

"By virtue of the authority vested in me by section 301(d) of Reorganization Plan No. 3 of 1967 (32 F.R. 11671), it is ordered that the following-designated officials of the District of Columbia shall, in the order of succession indicated, act as Commissioner of the District of Columbia during the absence from duty or disability of the Commissioner of the District of Columbia or in the event of a vacancy in the office of Commissioner:

"(1) The Assistant to the Commissioner of the District of Columbia provided for in section 302 of Reorganization Plan No. 3 of 1967.

"(2) The Corporation Counsel of the District of Columbia."

ABOLISHMENT OF BOARD OF COMMISSIONERS

Section 503 (a) and (b) of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"(a) Without prejudice to the continuation of the Corporation, there is hereby abolished the Board of Commissioners of the District of Columbia.

"(b) The abolition effected by subsection (a) of this section includes the abolition of the office held by an officer of the Corps of Engineers of the United States Army as the Engineer Commissioner of the District of Columbia (10 U.S.C. 3534(a); D.C. Code, sec. 1–201) and the two other offices of Commissioner of the District of Columbia, but nothing in this reorganization plan shall preclude the detail by the President of not more than three officers assigned to the Corps of Engineers to assist the Commissioner of the District of Columbia in discharging his duties (10 U.S.C. 3534(b); D.C. Code, sec. 1–212)."

TRANSFER OF FUNCTIONS TO COMMISSIONER

Section 401 of Reorganization Plan No. 3 of 1967, effective November 3, 1967, transferred functions of the Board of Commissioners, including functions of the President of the Board and all functions of each other member of the Board, including the executive power vested therein, to the Commissioner of the District of Columbia, except as provided by other sections of the Reorganization Plan. For provisions establishing the office of Commissioner of the District of Columbia and abolishing the Board of Commissioners, see sections 301 and 503 of the Plan, set out in the appendix to this title.

CROSS REFERENCE

Detail of not more than 3 officers assigned to the Corps of Engineers to assist Commissioner of the District of Columbia, see 10 U.S.C. 3534.

NOTES TO DECISIONS

Constitutionality

Federal District Court denied a request for convening of three-judge court in action to have certain statutes which vested executive and legislative power over the government of the District of Columbia in the defendants declared to be in conflict with the Ninth, Tenth, and Fifteenth Amendments to the Federal Constitution, and for injunction to restrain enforcement of certain statutes which purport to authorize the defendants to exercise specified executive and legislative powers, where claims of unconstitutionality were insubstantial. *D. Carliner et al.* v. *Board of Commissioners etc., et al.* (1967, 265 F. Supp. 736).

Motivation of particular legislators does not make a statute valid or invalid. *Id.*

Construction

Since under reorganization of government of District of Columbia, a single commissioner was assigned executive functions while council was assigned quasi-legislative functions and, under former law, both functions had been exercised by three-member board of commissioners, 1 U.S.C. 1 providing that, in determining meaning of act, words imparting plural include singular is not applicable to permit prosecution under section 22–702 prohibiting receiving money for procuring any office or promotion from the commissioners of District of Columbia. *United States* v. *T. W. Bishton* (D.C. App. 1970, 264 A. 2d 139).

Since there was not a single commissioner of District of Columbia as provided by government reorganization when section 22–702 was drafted prohibiting receiving money for procuring any office or promotion from commissioners of District of Columbia, defendant cannot be prosecuted under section 22–702 which had not been amended to conform to change to single commissioner by the reorganization. *Id.*

§ 1–202. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 648.

Section, act Dec. 24, 1890, J. Res. 7 (last sentence), 26 Stat. 1113, provided that Engineer Commissioner may be designated from rank of captain or above, and was superseded by 10 U.S.C. 3534 as enacted Aug. 10, 1956.

§ 1–203. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 646.

Section, act June 11, 1878, ch. 180, § 2 (2d sentence), 20 Stat. 103, provided that the Engineer Commissioner shall not be required to perform any other duty, and was superseded by 10 U.S.C. 3534 as enacted Aug. 10, 1956.

§ 1–204a. Compensation of President of Board of Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

For provisions relating to compensation of the Council members, the Commissioner and the Assistant to the Commissioner, see sections 204, 301 and 302 of Reorg. Plan No. 3 of 1967, set out in the appendix to this title.

NOTES TO DECISIONS

Right to three-judge court

Federal District Court denied a request for convening of three-judge court in action to have certain statutes which vested executive and legislative power over the government of the District of Columbia in the defendants declared to be in conflict with the Ninth, Tenth, and Fifteenth Amendments to the Federal Constitution, and for injunction to restrain enforcement of certain statutes which purport to authorize the defendants to exercise specified executive and legislative powers, where claims of unconstitutionality were insubstantial. *D. Carliner et al.* v. *Board of Commissioners etc., et al.* (1967, 265 F. Supp. 736).

Motivation of particular legislators does not make a statute valid or invalid. *Id.*

§ 1–204b. Compensation of Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

For provisions relating to compensation of the Council members, the Commissioner and the Assistant to the Commissioner, see sections 204, 301 and 302 of Reorg. Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–205. Engineer Commissioner not deemed to hold civil office.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–206. Civilian Commissioners—Qualifications.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

For provisions relating to qualifications of members of the Council and the Commissioner, see sections 201 and 301 of the Reorg. Plan No. 3, 1967, set out in the appendix to this title.

§ 1–207. Commissioners to choose president of Board.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

For provisions relating to qualifications of members of the Council and the Commissioner, see sections 201 and 301 of the Reorg. Plan No. 3, 1967, set out in the appendix to this title.

§ 1–208. Oath of Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

For provisions relating to the oath of office required to be taken by the members of the council and the Commissioner, see sections 201 and 301 of the Reorg. Plan No. 3, 1967, set out in the appendix to this title.

§ 1–209. Tenure of office.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

For provisions relating to the terms of office of the members of the council and the Commissioner, see sections 201 and 301 of the Reorg. Plan No. 3, 1967, set out in the appendix to this title.

§ 1–210. Officers becoming surety for contractors prohibited—Contractors not to be surety on bonds of officers.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–211. Quorum—Assistants to Engineer Commissioner to act in his absence.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Construction

Since under reorganization of government of District of Columbia, a single commissioner was assigned executive functions while council was assigned quasi-legislative functions and, under former law, both functions had been exercised by three-member board of commissioners, 1 U.S.C. 1 providing that, in determining meaning of act, words imparting plural include singular is not applicable to permit prosecution under section 22–702 prohibiting receiving money for procuring any office or promotion from the commissioners of District of Columbia. *United States* v. *T. W. Bishton* (D.C. App. 1970, 264 A. 2d 139).

Since there was not a single commissioner of District of Columbia as provided by government reorganization when section 22–702 was drafted prohibiting receiving money for procuring any office or promotion from commissioners of District of Columbia, defendant cannot be prosecuted under section 22–702 which had not been amended to conform to change to single commissioner by the reorganization. *Id.*

§ 1–212. Repealed. Aug. 10, 1956, ch. 1041, § 53, 70A Stat. 646, 649.

Section, acts June 11, 1878, ch. 180, § 5, 20 Stat. 107, and Aug. 7, 1894, ch. 232, 28 Stat. 246, related to detail of not more than 3 officers of the Corps of Engineers to assist the Commissioners of the District, and was superseded by 10 U.S.C. 3534 as enacted Aug. 10, 1956.

ABOLISHMENT OF BOARD OF COMMISSIONERS

Section 503(a) and (b) of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"(a) Without prejudice to the continuation of the Corporation, there is hereby abolished the Board of Commissioners of the District of Columbia.

"(b) The abolition effected by subsection (a) of this section includes the abolition of the office held by an officer of the Corps of Engineers of the United States Army as the Engineer Commissioner of the District of Columbia (10 U.S.C. 3534(a); D.C. Code, sec. 1–201) and the two other offices of Commissioner of the District of Columbia, but nothing in this reorganization plan shall preclude the detail by the President of not more than three officers assigned to the Corps of Engineers to assist the Commissioner of the District of Columbia in discharging his duties (10 U.S.C. 3534(b); D.C. Code, sec. 1–212)."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–213. Bonds of officers and employees.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–213a. Commissioners authorized to obtain surety bonds.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–213b. Commissioners bonds in lieu of employee bond.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–214. Secretary of Board of Commissioners authorized to execute certain documents.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–215. Volunteer services not to be accepted for government of District of Columbia.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–216. Offices, abolition or consolidation—Reduction of employees—Appointments to and removal from office.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

For provisions authorizing establishment of other new offices, see section 303 of the Reorg. Plan No. 3, 1967, set out in the appendix to this title.

NOTES TO DECISIONS

Construction

Since under reorganization of government of District of Columbia, a single commissioner was assigned executive functions while council was assigned quasi-legislative functions and, under former law, both functions had been exercised by three-member board of commissioners, 1 U.S.C. 1 providing that, in determining meaning of act, words imparting plural include singular is not applicable to permit prosecution under section 22–702 prohibiting receiving money for procuring any office or promotion from the commissioners of District of Columbia. *United States* v. *T. W. Bishton* (D.C. App. 1970, 264 A. 2d 139).

Since there was not a single commissioner of District of Columbia as provided by government reorganization when section 22–702 was drafted prohibiting receiving money for procuring any office or promotion from commissioners of District of Columbia, defendant cannot be prosecuted under section 22–702 which had not been amended to conform to change to single commissioner by the reorganization. *Id.*

§ 1–218. Commissioners—Executive power vested in.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–219. Taxes not to be anticipated by sale or hypothecation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–220. Pardons and respites—Power to grant—Commissioning of officers—Execution of laws.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–221. Location of hack stands.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–222. Establishment of hack stands adjoining railroad stations—Rates of charges.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–223. Rates for public vehicles to be fixed by Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–224. Police regulations authorized in certain cases.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(1) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–224a. Additional penalties for violation of regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(2) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–224b. Regulations for the keeping and running at large of dogs.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(3) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–226. Regulations for protection of life, health, and property.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(4) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

NOTES TO DECISIONS

Authority to promulgate curfew

Where city was overcome with rioting, burning and looting Commissioner of District of Columbia had statutory authority to promulgate curfew from 5:30 p.m. to 6:30 the next morning, barring all persons from streets of District of Columbia except police, firemen, medical personnel and district sanitary engineers, without express enabling legislation by Congress. *P. Glover* v. *District of Columbia* (D.C. App. 1969, 250 A. 2d 556).

A determination by Commissioner that an emergency situation existed, a curfew barring all persons from streets of District of Columbia except police, firemen, medical personnel and district sanitary engineers from 5:30 p.m. to 6:30 the next morning was a reasonable police regulation and that the curfew was necessary to protect persons and property, and federal troops were entering the city to combat sudden and rampant rioting, looting and burning, which were producing material discomfort to the citizens. *Id.*

Since curfew had become a usual device employed by municipalities to quell riots, curfew imposed on District of Columbia from 5:30 p.m. to 6:30 the next morning, barring all persons from the streets except police, firemen, medical personnel and district sanitary engineers, was a usual police regulation within scope of statute authorizing District Commissioner to make reasonable and usual police regulations. *Id.*

Commissioner's authority to issue curfew

A statute empowering Commissioner of District of Columbia to make and enforce all reasonable and usual police regulations as they may deem necessary for protection of persons and property was adequate authority for Commissioner to issue curfew barring all persons from streets in District during specified hours except law enforcement officers, firemen, physicians and nurses, and medical personnel and employees of department of sanitary engineering when city suddenly became rampant with rioting, looting and burning. *P. Glover* v. *District of Columbia* (D.C. App. 1969, 253 A. 2d 457).

Commissioner had authority to issue a curfew barring all persons from streets in District of Columbia during certain hours except law enforcement officers, firemen, physicians and nurses, and medical personnel and employees of department of sanitary engineering when city suddenly became rampant with rioting, looting and burning and it was a "reasonable and usual police regulation" within statute empowering Commissioner of District of Columbia to make and enforce all reasonable and usual police regulations. *Id.*

Constitutionality

Issuance of a curfew barring all persons from streets of District of Columbia from 5:30 p.m. to 6:30 a.m. the next day, except police, firemen, medical personnel and district sanitary engineers was not an unreasonable abridgement of defendant's constitutional rights of free travel, speech and assembly where city had suddenly become rampant with rioting, looting and burning, federal troops were entering the city to combat the widespread disturbances, and citizens were suffering material discomfort. *P. Glover* v. *District of Columbia* (D.C. App. 1969, 250 A. 2d 556).

Constitutionality of curfew

Where situation at time of imposition of curfew had deteriorated to a point where city had requested and received federal troops to cope with widespread fires and looting, and unlimited travel within city would have materially and directly interfered with safety and welfare of citizens of city, issuance of a curfew banning all persons from streets other than law enforcement officers, firemen, physicians, nurses and medical personnel and employees of district department of sanitary engineering was not an unconstitutional abridgement of freedom to travel. *P. Glover* v. *District of Columbia* (D.C. App. 1969, 253 A. 2d. 457).

Constitutionality of regulations

There is a strong presumption of constitutionality afforded to regulations regulating businesses under police power in interest of public safety, and one attacking such regulations on due process grounds carries the heavy burden of showing that the regulation is unreasonable and has no rational relationship to objective sought to be obtained. *F. R. Vanderhoof* v. *District of Columbia* (D.C. App. 1970, 269 A. 2d 112).

Duties of Appellate Court

It was the duty of the District of Columbia Court of Appeals, in reviewing conviction for violation of curfew which severely restricted activities of citizen in city imposed by Commissioner, as authorized by statute, when city suddenly became rampant with rioting, looting and burning, to be certain that restrictions were not more stringent than necessary to restore and assure peace and order in community. *P. Glover* v. *District of Columbia* (D.C. App. 1969, 253 A. 2d 457).

In reviewing conviction for violating curfew, the court would ordinarily consider availability of other governmental responses to end disorder yet place fewer restrictions on travel, free speech and assembly, but where there was no substantive body of knowledge with regard to how to deal with civil disorder once it reached emergency stage, court would confine review to question of whether curfew was so extensive as to geographical area and so unreasonable as to time and as to the elements of the citizenry which it affected as to require determination of unconstitutionality. *Id.*

Notice of curfew

It is improper to proclaim a District of Columbia police regulation and arrest a person for violating it without affording a reasonable period of time for notice. *P. Glover* v. *District of Columbia* (D.C. App. 1969, 250 A. 2d 556).

Defendant's arrest for violation of curfew was not unlawful for lack of notice of imposition of curfew where he was arrested more than three hours after curfew had been announced and the record did not suggest that he did not know and could not have known of curfew. *Id.*

Where arrest took place more than three hours after curfew had been announced, and there was nothing to suggest that he did not know or could not have known of existence of curfew, defendant's arrest would not be invalidated for lack of notice even though curfew was announced 15 minutes before it took effect. *P. Glover* v. *District of Columbia* (D.C. App. 1969, 253 A. 2d 457).

Penalty provisions

A curfew imposed upon District of Columbia was not invalid for failure to state which of several possible penalty provisions would be basis of punishment for violation and for leaving to courts the task of fixing the penalty in each case where curfew was a police regulation and police regulations provided that violation of a regulation wherein penalty was not specifically provided would be punished by fine of not more than $300. *P. Glover* v. *District of Columbia* (D.C. App. 1969, 250 A. 2d 556).

A fine of $12 imposed upon defendant for violation of curfew was within discretion of sentencing court under regulation permitting maximum penalty of a $300 fine. *Id.*

Proclamation of penalties for violation of curfew

Where curfew proclaimed that violations thereof would be punished as misdemeanors and that there was no statute fixing penalties for misdemeanor, did not render curfew void because it failed to state which of several possible penal provisions would be basis of punishment in view of police regulation providing that where penalty is not specified, person convicted of violating a regulation shall be punished by fine of not more than $300. *P. Glover* v. *District of Columbia* (D.C. App. 1969, 253 A. 2d 457).

Reasonableness of curfew

Inasmuch as disturbances throughout scattered areas of District of Columbia were without discernible pattern, and city officials could not predict with any certainty where new disturbances would next occur, application of curfew to entire District of Columbia was not unreasonable. *P. Glover* v. *District of Columbia* (D.C. App. 1969, 253 A. 2d 457).

Since more serious disturbances had occurred at night, curfew imposed from 5:30 p.m. to 6:30 a.m. on following morning was not unreasonable as to defendant who was arrested for violating curfew at 8:45 p.m. on first night of curfew. *Id.*

Sentences for violation of curfew

The probability of different sentences being imposed by different courts for violating curfew would not invalidate sentence so long as defendant was not punished in excess of penalty provided for by police regulations. *P. Glover* v. *District of Columbia* (D.C. App. 1969, 253 A. 2d 457).

The kind of sentence to be imposed following conviction for violation of curfew was within discretion of sentencing court, as long as it did not exceed penalty provided by police regulations. *Id.*

§ 1–227. Regulations relative to firearms, explosives, and weapons.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(4) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

NOTES TO DECISIONS

Council's authority to make regulations

Council had power, by way of congressional delegation, to make regulations relating to firearms. *Maryland & District of Columbia Rifle and Pistol Association, Inc.* v. *W. E. Washington, Commissioner, et al.* (1969, 294 F. Supp. 1166).

§ 1–228. Building regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(5) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other

functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–229. Regulations for construction and operation of elevators—Penalty.

The Commissioners of the District of Columbia are hereby authorized and directed to make and publish such orders as may be necessary to regulate the construction, repair, and operation of all elevators within the District of Columbia, and prescribe such means of security as may be found necessary to protect life and limb.

Any person or persons, or corporation, who shall neglect or refuse to comply with the orders made pursuant to this section, shall, upon conviction thereof in the Superior Court of the District of Columbia, on information filed in the name of the District of Columbia, be fined not less than ten dollars nor more than one hundred dollars for each offense. (Mar. 3, 1887, 24 Stat. 580, ch. 390, §§ 1, 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(6) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–230. Regulations for control of rabies—Vaccination of dogs—Penalties.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(7) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–231. Outdoor signs—Commissioners may make regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(8) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1–233.

§ 1–232. License requirements—Outdoor signs—Fee.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1–233.

§ 1–233. Penalties—Publication of regulations.

Any person, persons, firm, or corporation, whether as principal, agent, or employee, violating sections 1–231 to 1–233 or any of the regulations promulgated pursuant to said sections shall, upon conviction thereof in the Superior Court of the District of Columbia, be fined not less than $5 nor more than $200 for each and every offense, and a like fine shall be imposed for each and every day thereafter that such violation of law shall continue: *Provided,* That the regulations promulgated hereunder shall be printed in one of the daily newspapers published in the District of Columbia, and no penalty prescribed for the violation of said regulations shall be enforced until thirty days after the publication of such regulations. (Mar. 3, 1931, 46 Stat. 1486, ch. 399, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 1–234. Lights—Maintenance outside city limits.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–236. Sale of street sweepings authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–237. Investigations of municipal matters by Commissioners—Authority to administer oaths.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(9) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners with respect to making investigations of municipal matters and administering oaths, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–238. Annual report to Congress.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(10) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–239. Illustrations in reports prohibited, unless authorized by Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–240. Originals of discontinued reports of government of District of Columbia to be preserved for public inspection.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–243. Repealed. Jan. 5, 1971, Pub. L. 91–650, title VII, § 705(c)(1), 84 Stat. 1940.

Section, act June 28, 1944, ch. 300, § 6, 58 Stat. 532, restricted the rate of rent for quarters leased by the District of Columbia. See § 1–243b.

TERM OF LEASES

Section 12 of the District of Columbia Appropriation Act of Nov. 13, 1967, Pub. L. 90–134, 81 Stat. 441, provided:

"Appropriations in this Act shall be available, when authorized by the Commissioners, for the rental of quarters without reference to section 6 of the District of Columbia Appropriation Act, 1945." Similar provisions are contained in the following appropriation act:

1971—July 16, 1970, Pub. L. 91–337, § 11, 84 Stat. 436.
1970—Dec. 24, 1969, Pub. L. 91–155, § 12, 83 Stat. 433.
1969—Aug. 10, 1968, Pub. L. 90–473, § 12, 82 Stat. 699.

§ 1–243a. Repealed. Jan. 5, 1971, Pub. L. 91–650, title VII, § 705(c)(2), 84 Stat. 1940.

Section, act Aug. 6, 1958, Pub. L. 85–594, § 12, 72, Stat. 511, limited to 5 years leases for rentals. See § 1–243b.

§ 1–243b. Leasing authority—Limitations—Maximum rental.

(a) Notwithstanding any other provision of law, the Commissioner of the District of Columbia is authorized to enter into lease agreements with any person, copartnership, corporation, or other entity, which do not bind the government of the District of Columbia for periods in excess of twenty years for each such lease agreement, on such terms and conditions, including, without limitation, lease-purchase, as he deems to be in the interest of the District of Columbia and necessary for the accommodation of District of Columbia agencies and activities in buildings or other improvements which are in existence or are to be constructed by the lessor for such purposes, or on unimproved real property.

(b) No lease agreement entered into under subsection (a) shall provide for the payment of rental in excess of the limitations prescribed by section 322 of the Act entitled "An Act making appropriations for the Legislative Branch of the Government for the fiscal year ending June 30, 1933, and for other purposes", approved June 30, 1932 (40 U.S.C. 278a), except that the provisions of this subsection shall not apply to leases made prior to January 5, 1971, except when renewals thereof are made after such date. (Jan. 5, 1971, Pub. L. 91–650, title VII, § 705(a)(b), 84 Stat. 1939.)

CODIFICATION

In subsec. (b), the words "January 5, 1971," has been substituted for "the date of enactment of the District of Columbia Revenue Act of 1970".

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of Act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

§ 1–244. Additional powers of Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(11, 12, 13, 14, 15) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (a), (b), (f) and (h) to the extent provided in section 402 (11 to 15) of the Plan to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7–902, 40–903, 47–2345.

§ 1–245. Appointment of contracting officers—Powers—Approval of contracts over $3,000—Void contracts—Liquidated damage contracts.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–246. Powers and duties of Director of Inspection—Delegation of authority.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–248. Effectuate settlement for real estate acquired by purchase or condemnation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–249. Power conferred by sections 1–244 to 1–246 and 1–248 as additional.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–250. Purchase of vehicles—Trade-in as part payment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–251. Authority to grant additional compensation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–252. Authority to fix certain licensing and registration fees.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–253. Same—Increase or decrease of fees.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–254. Commissioners authority to determine honorariums for members of boards—Deposit of fees in the Treasury—Receipt of honorarium without prejudice to other compensation—Definition—Operation of civil service retirement laws.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–257. Commissioners authorized to change and fix licensing periods.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(16) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–258. Applicability of sections 1–254 to 1–258 to boards covered by Reorganization Plan No. 5 of 1952.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–260. Holidays for District employees—Regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(17) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–261. Authority for transporting children of certain employees in District-owned vehicles.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–262. Reception by Commissioners of eminent persons—Appropriation authorized.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(18) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to the reception and entertainment of officials and other dignitaries to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–263. Advancement of moneys by disbursing officer.

SIMILAR PROVISIONS

Similar provisions were contained in the following District of Columbia Appropriation Acts:

1971—July 16, 1970, Pub. L. 91–337, § 6, 84 Stat. 436.
1970—Dec. 24, 1969, Pub. L. 91–155, § 7, 83 Stat. 432.
1969—Aug. 10, 1968, Pub. L. 90–473, § 7, 82 Stat. 699.
1968—Nov. 13, 1967, Pub. L. 90–134, § 7, 81 Stat. 440.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–264. Imposition of penalties by Commissioners for delivery of bad checks in payment of obligations due District of Columbia—Basis for penalty—Exception—Manner of collection.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(19) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–265. District of Columbia student loan insurance program.

CODIFICATION

Section is also classified to 20 U.S.C. 1086.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–266. District of Columbia medical assistance program—Standards and criteria for determining eligibility—Definitions.

(a) The Commissioner of the District of Columbia (hereafter in this section and section 1–267 referred to as the "Commissioner") may submit under title XIX of the Social Security Act to the Secretary of Health, Education, and Welfare (hereafter in this section and section 1–267 referred to as the "Secretary") a plan for medical assistance (and any modifications of such plan) to enable the District of Columbia to receive Federal financial assistance under such title for a medical assistance program established by the Commissioner under such plan.

(b)(1) Notwithstanding any other provision of law, the Commissioner may take such action as may be necessary to submit such plan to the Secretary and to establish and carry out such medical assistance program, except that in prescribing the standards for determining eligibility for and the extent of medical assistance under the District of Columbia's plan for medical assistance, the Commissioner may not (except to the extent required by title XIX of the Social Security Act)—

(A) prescribe maximum income levels for recipients of medical assistance under such plan which exceed (i) the title XIX maximum income levels if such levels are in effect, or (ii) the Commissioner's maximum income levels for the local medical assistance program if there are no title XIX maximum income levels in effect; or

(B) prescribe criteria which would permit an individual or family to be eligible for such assistance if such individual or family would be ineligible, solely by reason of his or its resources, for medical assistance both under the plan of the State of Maryland approved under title XIX of the Social Security Act and under the plan of the State of Virginia approved under such title.

(2) For purposes of subparagraph (A) of paragraph (1) of this subsection—

(A) the term "title XIX maximum income levels" means any maximum income levels which

may be specified by title XIX of the Social Security Act for recipients of medical assistance under State plans approved under that title;

(B) the term "the Commissioner's maximum income levels for the local medical assistance program" means the maximum income levels prescribed for recipients of medical assistance under the District of Columbia's medical assistance program in effect in the fiscal year ending June 30, 1967; and

(C) during any of the first four calendar quarters in which medical assistance is provided under such plan there shall be deemed to be no title XIX maximum income levels in effect if the title XIX maximum income levels in effect during such quarter are higher than the Commissioner's maximum income levels for the local medical assistance program.

(Dec. 27, 1967, Pub. L. 90–227, § 1, 81 Stat. 744.)

REFERENCES IN TEXT

Title XIX of the Social Security Act referred to in text is set out as sections 1396 to 1396g of title 42 U.S. Code.

§ 1–267. Supplementary medical insurance program.

The Commissioner may enter into an agreement (and any modifications of such agreement) with the Secretary under section 1843 of the Social Security Act pursuant to which (1) eligible individuals (as defined in section 1836 of the Social Security Act) who are eligible to receive medical assistance under the District of Columbia's plan for medical assistance approved under title XIX of the Social Security Act will be enrolled in the supplementary medical insurance program established under part B of title XVIII of the Social Security Act, and (2) provisions will be made for payment of the monthly premiums of such individuals for such program. (Dec. 27, 1967, Pub. L. 90–227, § 2, 81 Stat. 745.)

REFERENCES IN TEXT

Title XIX of the Social Security Act referred to in text is set out as sections 1396 to 1396g of title 42 U.S. Code.

Section 1836 of the Social Security Act is set out in section 1395o of title 42 U.S. Code.

Section 1843 of the same act is set out as section 1395v of title 42 U.S. Code.

Part B of title XVIII of the same act is set out as sections 1395j to 1395w of title 42 U.S. Code.

Chapter 2A.—DELEGATE TO THE HOUSE OF REPRESENTATIVES

Sec.
1–291. Delegate to the House of Representatives from the District of Columbia.
1–292. Applicability of other laws.

§ 1–291. Delegate to the House of Representatives from the District of Columbia.

(a) The people of the District of Columbia shall be represented in the House of Representatives by a Delegate, to be known as the "Delegate to the House of Representatives from the District of Columbia", who shall be elected by the voters of the District of Columbia in accordance with chapter 11 of this title. The Delegate shall have a seat in the House of Representatives, with the right of debate, but not of voting, shall have all the privileges granted a Representative by section 6 of Article I of the Constitution, and shall be subject to the same restrictions and regulations as are imposed by law or rules on Representatives. The Delegate shall be elected to serve during each Congress.

(b) No individual may hold the office of Delegate to the House of Representatives from the District of Columbia unless on the date of his election—

(1) he is a qualified elector (as that term is defined in section 1–1102(2) of the District of Columbia;

(2) he is at least twenty-five years of age;

(3) he holds no other paid public office; and

(4) he has resided in the District of Columbia continuously since the beginning of the three-year period ending on such date.

He shall forfeit his office upon failure to maintain the qualifications required by this subsection. (Sept. 22, 1970, Pub. L. 91–405, title II, § 202, 84 Stat. 848.)

FIRST ELECTIONS AND EFFECTIVE DATE OF TITLE II OF PUB. L. 91–405

Section 206 of act Sept. 22, 1970, Pub. L. 91–405, provided:

(a) Before the expiration of the seven-calendar-month period beginning on the first day of the first calendar month beginning on or after the date of the enactment of this Act, the Board of Elections of the District of Columbia shall—

(1) conduct such special elections as may be necessary to select candidates for the office of Delegate to the House of Representatives from the District of Columbia;

(2) provide for the direct nomination by petition of candidates for such offices; and

(3) conduct such other special elections as may be necessary to select from such candidates the Delegate to the House of Representatives from the District of Columbia.

The Board of Elections shall prescribe the date on which each election under paragraphs (1) and (3) shall be held, the dates for the circulation and filing of nominating petitions for such elections, and such other terms and conditions which it deems necessary for the conduct of such elections within the period prescribed by this subsection. Nominating petitions for an election under paragraph (1) shall meet the requirements of clauses (2) and (3) of section 8(i) of the District of Columbia Election Act [D.C. Code, § 1–1108(i)] and nominating petitions under paragraph (2) shall meet the requirements of clauses (B) and (C) of section 8(j)(1) of such Act [D.C. Code, § 1–1108(j)(1)].

(b) This title and the amendments made by this title shall take effect on the date of its enactment.

SHORT TITLE

Section 201 of act Sept. 22, 1970, Pub. L. 91–405, provided: "This title [enacting sections 1–291 and 1–292 and provisions set out as notes to section 1–291, amending sections 1–1101, 1–1102, 1–1104, 1–1108 to 1–1110, 1–1113, 1–1114, and 25–107, and amending various sections of the U.S. Code] may be cited as the 'District of Columbia Delegate Act'."

§ 1–292. Applicability of other laws.

The provisions of law which appear in—

(1) section 25 (relating to oath of office),

(2) section 31 (relating to compensation),

(3) section 34 (relating to payment of compensation),

(4) section 35 (relating to payment of compensation),

(5) section 37 (relating to payment of compensation),

(6) section 38a (relating to compensation),

(7) section 39 (relating to deductions for absence),

(8) section 40 (relating to deductions for withdrawal),

(9) section 40a (relating to deductions for delinquent indebtedness),

(10) section 41 (relating to prohibition on allowance for newspapers),

(11) section 42c (relating to postage allowance),

(12) section 46b (relating to stationery allowance),

(13) section 46b–1 (relating to stationery allowance),

(14) section 46b–2 (relating to stationery allowance),

(15) section 46g (relating to telephone, telegraph, and radio-telegraph allowance),

(16) section 47 (relating to payment of compensation),

(17) section 48 (relating to payment of compensation),

(18) section 49 (relating to payment of compensation),

(19) section 50 (relating to payment of compensation),

(20) section 54 (relating to provision of United States Code Annotated or Federal Code Annotated),

(21) section 60g–1 (relating to clerk hire),

(22) section 60g–2(a) (relating to interns),

(23) section 80 (relating to payment of compensation),

(24) section 81 (relating to payment of compensation),

(25) section 82 (relating to payment of compensation),

(26) section 92 (relating to clerk hire),

(27) section 92b (relating to pay of clerical assistants),

(28) section 112e (relating to electrical and mechanical office equipment),

(29) section 122 (relating to office space in the District of Columbia), and

(30) section 123b (relating to use of House Recording Studio),

of title 2 of the United States Code shall apply with respect to the Delegate to the House of Representatives from the District of Columbia in the same manner and to the same extent as they apply with respect to a Representative. The Federal Corrupt Practices Act and the Federal Contested Election Act shall apply with respect to the Delegate to the House of Representatives from the District of Columbia in the same manner and to the same extent as they apply with respect to a Representative. (Sept. 22, 1970, Pub. L. 91–405, title II, § 204(a), 84 Stat. 852.)

REFERENCES IN TEXT

Section 60g–1 of title 2, United States Code, referred to in par. (21), was repealed by section 477(a)(2) of act Oct. 26, 1970, Pub. L. 91–510, effective immediately prior to noon on Jan. 3, 1971. For current provisions relating to clerk hire, see section 332 of title 2, U.S.C.

The "Federal Corrupt Practices Act" referred to in this section means title III of act Feb. 28, 1925, ch. 368, 43 Stat. 1070 (2 U.S.C. 241–256; 18 U.S.C. 597, 599, 602, 610). The "Federal Contested Elections Act" means the act Dec. 5, 1969, Pub. L. 91–138, 83 Stat. 284 (2 U.S.C. 381–396).

Chapter 3.—OFFICERS AND EMPLOYEES GENERALLY

Sec.
1–320. Eligibility for employment in the District of Columbia Government.

§ 1–301. Corporation Counsel—Duties.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCES

Duty to conduct criminal prosecution; determination of duty by Court of Appeals, see § 23–101.

Duty to furnish reports and information to Executive Officer of the District of Columbia courts, see § 11–1731.

Duty to prosecute support actions, see § 16–2341.

Duty to represent police in wrongful arrest actions, see § 4–143a.

Intrafamily offense proceedings, see § 16–1002 et seq.

Juvenile proceedings, see §§ 16–2305, 16–2316, 16–2326.

Power to institute quo warranto proceedings, see § 16–3522.

Prosecutions for unlawful disclosure of juvenile records, see § 16–2335.

Prosecutions for unlawful disclosure of paternity records, see § 16–2348.

§ 1–302. Assistant corporation counsels—Duties.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–304. Purchasing officer—Duties—Bond.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–306. Municipal architect—Duties.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–309. Reports by custodians of property.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–310a. Salary increases by reason of reallocation of positions—Limitation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–311. Repealed. Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–544, § 8(a).

* * * * *

Act July 4, 1966, 80 Stat. 252, Pub. L. 89–488, amended various provisions of former Federal Employees' Compensation Act [5 U.S.C. former § 751 et seq.]. Section 15 of that act made the amendments applicable to employees of the government of the District of Columbia except members of the Police and Fire Departments. The act of September 6, 1966, Pub. L. 89–554, enacted into law the former provisions of the Federal Employees Compensation Act and district employees except Firemen and Police are covered by that act. The act of September 11, 1967, Pub. L. 90–83, brought into the new Title 5, the provisions of the act of July 4, 1966, Pub. L. 89–488 and section 10(b) of that act repealed Pub. L. 89–488, section 15 of which was set out as a note to this section.

§ 1–313. Per diem employees—Leave of absence.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–315. Pay rolls—Signature by mark.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–316. Persons convicted of certain crimes ineligible to hold office.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–317. Repealed. Sept. 6, 1966, 80 Stat. 636, Pub. L. 89–554, § 8(a).

Section, based on 5th par. under "Public Buildings" of Act Mar. 3, 1893, ch. 208, 27 Stat. 591, prohibited employment of employees of detective agencies, and is now covered by 5 U.S.C. 3108.

§ 1–320. Eligibility for employment in the District of Columbia Government.

In any program of recruitment or hiring of individuals to fill positions in the government of the District of Columbia, no officer or employee of the government of the District of Columbia shall exclude or give preference to the residents of the District of Columbia or any State of the United States on the basis of residence, religion, race, color, or national origin. (Nov. 3, 1967, Pub. L. 90–120, Title III, § 301, 81 Stat. 340.)

SHORT TITLE

Section 1, Act Nov. 3, 1967, Pub. L. 90–120 provided: "That this Act [amending section 47–2501a, subsection 9–220(b), repealing subsection 9–220(f) and enacting section 1–320] may be cited as the 'District of Columbia Federal Payment Authorization and Borrowing Authority Act of 1967'."

Chapter 5.—NOTARIES PUBLIC

§ 1–501. Appointment—Representation of clients before government departments—Administration of certain acknowledgments—License fee—Rules and regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(20) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to prescribing rules and regulations relating to notaries public to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–504. Oath and bond.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–506. Signature and impression of seal prohibited.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–509. Inland bills and notes—Protest—Penalty.

Notaries public may also demand acceptance of inland bills of exchange and payment thereof, and of promissory notes and checks, and may protest the same for nonacceptance or nonpayment, as the case may require. And on the original protest thereof he shall state the presentment by him of the same for acceptance or payment, as the case may be, and the nonacceptance or nonpayment thereof, and the service of notice thereof on any of the parties to the same, and the mode of giving such notice, and the reputed place of business or residence of the party to whom the same was given; and such protest shall be prima facie evidence of the facts therein stated. And any notary public failing to comply herewith shall pay a fine of ten dollars to the District of Columbia, to be collected in the Superior Court of the District of Columbia as are other fines and penalties. (Mar. 3, 1901, 31 Stat. 1279, ch. 854, § 567; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 27, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 1–515. Penalties for taking higher fees.

Any notary public who shall take a higher fee than is prescribed by the preceding section shall pay a fine of one hundred dollars and be removed from office by the Superior Court of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1280, ch. 854, § 572; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 263, Pub. L. 89–493, § 3; July 29, 1970, Pub. L. 91–358, § 155(a), 84 Stat. 570.)

AMENDMENTS

1970—Section 155(a) of Act of July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

1966—Act July 5, 1966, substituted "District of Columbia Court of General Sessions" for "United States District Court for the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act July 5, 1966, as effective on first day of first month which is at least ninety days after July 5, 1966, see § 21 of such act, set out in note under § 1–504.

APPROPRIATIONS

Appropriations authorized to carry out purposes of act July 5, 1966, which amended this section, see § 20 of such act, set out in note under § 1–504.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 1–516. Vacation of office—Custody of records and papers.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–517. Certificates issued by Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–518. Appropriation—Inclusion of expenses and salaries in Commissioners' annual estimates.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 6.—SURVEYOR

§ 1–601. Appointment and term of office—Salary.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–602. Oath.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–603. Assistant surveyor and other employees.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–613. Plats—Regulation—Recording.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(21) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–615. Cemeteries—Right of way through.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–616. Surveys for District—Fees and documents.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–621. Lots and parcels may be resurveyed to determine accuracy—Recording only on order.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–622. Reference to subdivisions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–623. Alleys—Police regulation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–629. Commissioners of the District of Columbia to prescribe fees for surveyor—Schedule of fees to be displayed.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(22) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

Chapter 7.—INSPECTION—REGULATORY PROVISIONS

§ 1–701. Boiler Inspection Act—Short title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1–713, 1–714.

§ 1–703. Boiler inspection service created—Personnel.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–704. Bond—Oath.

The said inspector shall give bond, with two sufficient securities, to be approved by the Commissioners in the sum of $2,000, and he shall take and subscribe the following oath or affirmation before a notary public or a judge of the Superior Court of the District of Columbia: "I do solemnly swear that I will diligently, faithfully, and impartially execute the duties of my office without favor." (Leg. Assem., June 25, 1873, ch. 25, § 4; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–705. Inspection of designated steam boilers and unfired pressure vessels.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(23) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–706. Operating at pressure greater than permitted.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–707. Annual inspection—Certificate of inspection—Display.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–710. Fees—Certificate invalidated by cessation of insurance.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–712. Records to be kept.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–713. Unauthorized use deemed nuisance—Proceedings to abate.

The use of any steam boiler or unfired pressure vessel in violation of any of the prohibitions or requirements of sections 1–701 to 1–718, or of the regulations promulgated under the authority hereof, shall constitute a common nuisance and the Corporation Counsel of the District of Columbia may maintain an action in the Superior Court of the District of Columbia, in the name of the District of Columbia, to abate and perpetually enjoin such nuisance. (June 25, 1936, 49 Stat. 1917, ch. 802. § 12; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(2), 84 Stat. 570.)

AMENDMENT

1970—Section 155(c)(2) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 1–714. Penalties.

If any person shall violate any one or more of the provisions of sections 1–701 to 1–718 or of regulations duly promulgated hereunder, the Corporation Counsel of the District of Columbia, or any of his assistants, shall file an information in the Superior Court of the District of Columbia in the name of the District of Columbia, and upon conviction such persons shall be subject to a fine not to exceed $100 or to imprisonment for not more than ninety days, or both, for each and every violation thereof, and each violation shall constitute a separate offense. (June 25, 1936, 49 Stat. 1917, ch. 802, § 13; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 1–715. Regulations—Fees.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(24) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–718. Effective date of sections 1–701 to 1–718—Promulgation of regulations and schedules of fees.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1–713, 1–714.

§ 1–719. Electric wiring—Inspection—Rules and regulations—Fees.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(25) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1–720.

§ 1–720. Inspection—Notice of violations—Penalty.

The electrical engineer who shall be chief inspector of electrical work and his assistants are hereby empowered and required, under the direction of the commissioners, to inspect any building in course of erection and during reasonable hours to enter into and examine any building where electrical current is produced or utilized for lighting, heating, or for power, for the purpose of ascertaining violations of any of the provisions of sections 1–719 to 1–723; and upon finding any devices aforesaid defective or dangerous shall cause to be delivered a written notice of any violation of any provisions of said sections, or of any regulation of said Commissioners duly adopted, to the constructing contractor, owner, or agent of any building directing him or them to remove or amend the same within a period to be fixed in said notice; and in case of neglect or refusal on the part of the party so notified to remove or amend the same within the time and in the manner prescribed by the chief inspector of electrical work, and approved by the Commissioners of the District of Columbia, the party so offending shall pay a fine of not more than $25 for each and every day's failure or neglect to remove or amend the same after being so notified, and in default of payment of such fine such persons shall be confined in the workhouse of the District of Columbia for a period not exceeding one month; and all prosecutions under sections 1–719 to 1–723 shall be in the Superior Court of the District of Columbia, in the name of the District of Columbia. (Apr. 26,

1904, 33 Stat. 307, ch. 1602, § 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–721. Electrical engineer—Appointment—Qualifications—Assistant inspectors.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–723. Connecting current before inspection—Penalty—Authority to remove connection.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1–720.

§ 1–724. Plumbing—Appointment of inspector—Duties.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–725. Regulations governing plumbing, house drainage, sewers, and for examination and licensing of plumbers and gas-fitters—Noncompliance—Penalty.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(26) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–726. Fees for permits for sewer, gas, and water connections, excavations—Disposition of fees.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(27) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board or Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–727. Inspector of plumbing—Inspection of buildings—Enforcement of regulations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 8.—CONTRACTS

Sec.

1–804a. Public contractors required to post performance and payment bonds in certain cases—Amount of bonds.
1–804b. Rights of laborers and materialmen to sue on payment bonds—Prior notice of claim required in certain cases—Time limitations—Suit to be brought in name of District of Columbia.
1–804c. Certified copy of bond and contract to be furnished on application of interested parties—Copy as prima facie evidence—Fees.
1–805. Contractors' bond not required for contracts not exceeding $2,000—Contracts not to be subdivided to reduce amount.
1–806. Formal contract with bond not required in contracts not exceeding $2,000.
1–820. Reciprocal agreements for police mutual aid with authorities in Maryland and Virginia.
1–821. Same; Provisions to be included in agreements.
1–822. Same; District police and other personnel to retain all benefits provided by District Government.
1–823. Same; Commissioner to direct cut of District police and other personnel—Enforcement of District laws by cut of District police and personnel.
1–824. Contracts for inspection, maintenance and repair of fixed equipment.

§ 1–801. Limitation on right of Commissioners to contract.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–802. Contracts in which Commissioners personally interested to be void.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–803. Commissioners' contracts to be in writing and filed.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–804. Repealed. Aug. 3, 1968, Pub. L. 90–455, 82 Stat. 629 § 7.

Section, act July 7, 1932, 47 Stat. 608, ch. 441, as amended dealt with requirement for bonds to be posted by public contractors; rights of laborers and materialmen, etc. The subject matter is now covered by sections 1–804 a, b and c. The repealing section provided that "such Act [§ 1–804] shall remain in force with respect to contracts for which invitations for bids have been issued on or before the effective date of this Act, and to persons or bonds in respect to such contracts." For effective date, see note under this section.

EFFECTIVE DATE OF PUB. L. 90–455, AND RESERVATION OF RIGHTS

See § 8 of Pub. L. 90–455, set out as a note to sec. 1–804a.

NOTES TO DECISIONS

Construction

Statute providing that District of Columbia shall have six months from completion and final settlement of prime contract to bring suit against surety and thereafter subcontractor creditors may bring suit in name of District is to be liberally construed in aid of the public object of providing security to those who contribute labor or material for public works. *District of Columbia for the use etc.* v. *Edrow Engineering Company, Inc., et al.* (1968, 284 F. Supp. 549).

Under statute providing that District of Columbia shall have six months from completion and final settlement to bring suit against surety and thereafter subcontractor creditors may bring suit in name of District, where rights of subcontractors are attempted to be asserted before statute recognizes they have matured and consequent effect is to prevent orderly and effective disposition of all claims and to impede work of court, strict regard for statutory provisions authorizing suit and governing creation of jurisdiction is essential. *Id.*

Dismissal of complaint

Under statute providing that District of Columbia shall have six months from completion and final settlement of prime contract to bring suit against surety and thereafter subcontractor creditors may bring suit in name of District and providing that when suit is instituted personal notice should be given to all known creditors in addition to notice by publication, where suit for labor and materials furnished pursuant to subcontract was filed about 15 months before final settlement and no notice was given to other creditors by either party, complaint would be dismissed without prejudice. *District of Columbia for the use etc.* v. *Edrow Engineering Company, Inc., et al.* (1968, 284 F. Supp. 549).

District's responsibility

Under statute providing that District of Columbia shall have six months from completion and final settlement of prime contract to bring suit against surety and thereafter subcontractor may bring suit in name of the District, District has responsibility to answer all questions from interested parties and to assist them when uncertainties arise as to dates of final settlement. *District of Columbia for the use etc.* v. *Edrow Engineering Company, Inc., et al.* (1968, 284 F. Supp. 549).

Extent of proof required by materialmen

Section giving right of recovery to any person "who has furnished labor or materials used in the construction or repair of any public building or public work" is construed for purposes of recovery upon the bond in suit, to require only a showing that materials or equipment have, by reference to public contract, been furnished by subcontractor to general contractor and have been accepted by general contractor for use in that contract. *The Aetna Casualty and Surety Co.* v. *Circle Equipment Co., et al.* (1967, 377 F. 2d 160, 126 U.S. App. D.C. 275).

Issue of prematurity of suit

Under statute providing that District of Columbia shall have six months from completion and final settlement of prime contract to bring suit against surety and thereafter subcontractor creditors may bring suit in name of District, issue of prematurity of suit by subcontractor should be raised by motion before trial unless extremely complicated factual issues as to date of completion or final settlement are presented. *District of Columbia for the use etc.* v. *Edrow Engineering Company, Inc., et al.* (1968, 284 F. Supp. 549).

Jurisdiction of District Court

Under statute authorizing District of Columbia to bring suit within six months on contractor's bond, during which time unpaid creditors could intervene, and providing that if district did not bring suit within six months after final settlement under contract unpaid creditors could bring suit in district court in name of district, district court had jurisdiction of subcontractor's suit commenced within six-month period notwithstanding that suit was not brought during period by district, where contractor did not challenge subject matter jurisdiction until after expiration of six-month period, even though suit would have been subject to dismissal as prematurely brought if dismissal had been sought within six-month period. *The Aetna Casualty and Surety Co.* v. *Circle Equipment Co., et al.* (1967, 377 F. 2d 160, 126 U.S. App. D.C. 275).

Limitation on intervention

Under this section which required party having a claim against a contractor on school project to intervene in any pending action against contractor within one year after completion of the work and which required three weeks' published notice, the last publication to be at least three months before the time limited therefor, claims which were filed more than one year after final settlement but within time contemplated by notice provision were properly allowed. *J. F. Hughes & Co. Inc. et ano.* v. *District of Columbia etc., et al.* (1969, 413 F. 2d 376, 134 U.S. App. D.C. 102).

Materialmen supplying contractor building school were to have assistance of published notice in ascertaining whether suit had been filed in which they could intervene. *Id.*

Notice by publication

Under statute providing that District of Columbia shall have six months from completion and final settlement of prime contract to bring suit against surety and thereafter subcontractor creditors may bring suit in name of the District and providing that when suit is instituted personal notice shall be given to all known creditors in addition to notice by publication, burden and expense of notice by publication should reasonably be borne by the plaintiff subcontractor. *District of Columbia for the use etc.* v. *Edrow Engineering Company, Inc., et al.* (1968, 284 F. Supp. 549).

Obligation to give personal notice

Under statute providing that District of Columbia shall have six months from completion and final settlement to bring suit against surety and permitting subcontractor creditors to bring suit thereafter and providing that personal notice shall be given to all known creditors in addition to notice by publication, obligation to give personal notice is that of the prime contractor, and if such notice is not given, prime contractor should not be permitted to take advantage of the "one action" provision when later sued by subcontractor without actual notice. *District of Columbia for the use etc.* v. *Edrow Engineering Company, Inc., et al.* (1968, 284 F. Supp. 549).

Statutory scheme

Statutory scheme for orderly procedure for prosecuting claims against surety on contract with District of Columbia can only be achieved if subcontractor claimants observe clear directive of statute and no suit is filed until six months after final settlement. *District of Columbia for the use etc.* v. *Edrow Engineering Company Inc., et al.* (1968, 284 F. Supp. 549).

§ 1-804a. Public contractors required to post performance and payment bonds in certain cases—Amount of bonds.

(a) Before any contract, exceeding $2,000 in amount, for the construction, alteration, or repair of any public building or public work of the District of Columbia is awarded to any person, such person shall furnish to the District of Columbia the following bonds, which shall become binding upon the award of the contract to such person, who is hereinafter designated as "contractor":

(1) A performance bond with a surety or sureties satisfactory to the Commissioners of the District of Columbia, and in such amount as they shall deem adequate, for the protection of the District of Columbia.

(2) A payment bond with a surety or sureties satisfactory to the Commissioners for the protection of all persons supplying labor and material in the prosecution of the work provided for in said contract for the use of each such person. Whenever the total amount payable by the terms of the contract shall be not more than $1,000,000 the payment bond shall be in a sum equal to one-half the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than $1,000,000 and not more than $5,000,000, the said payment bond shall be in a sum equal to 40 per centum of the total amount payable by the terms of the contract. Whenever the total amount payable by the terms of the contract shall be more than $5,000,000 the payment bond shall be in the sum of $2,500,000.

(b) Nothing in this section shall be construed to limit the authority of the Commissioners to require a performance bond or other security in addition to

those, or in cases other than the cases specified in subsection (a) of this section. (Aug. 3, 1968, Pub. L. 90–455, § 1, 82 Stat. 628.)

EFFECTIVE DATE OF PUB. L. 90–455, AND RESERVATION OF RIGHTS

Section 8 of act Aug. 3, 1968, Pub. L. 90–455, provided: "This Act [See enumeration of classification of this act in Definition of Terms note] shall take effect upon the expiration of sixty days after the date of its enactment, but shall not apply to any contract awarded pursuant to any invitation for bids issued on or before the date it takes effect, or to any person or bond in respect of any such contract."

TRANSFER OF FUNCTIONS TO COMMISSIONER OF THE DISTRICT

Section 9 of act Aug. 3, 1968, Pub. L. 90–455, provided: "Effective on the effective date of this Act or on the effective date of part IV of Reorganization Plan No. 3 of 1967 [See Appendix to title 1], whichever is later, the functions vested in the Board of Commissioners by this Act shall be deemed to be vested in the Commissioner appointed pursuant to part III of such plan." [See effective date note.]

DEFINITIONS OF TERMS USED IN PUB. L. 90–445

Section 6 of act Aug. 3, 1968, Pub. L. 90–445, provided: "As used in this Act (enacting sections 1–804a, 1–804b, 1–804c, amending sections 1–805 to 1–807, repealing section 1–804, and enacting sections 6, 8 and 9 set out as notes to this and certain of above enumerated sections), the term 'person' and the masculine pronoun shall include all persons whether individuals, associations, copartnerships, or corporations, and the terms 'Commissioners of the District of Columbia' and 'Commissioners' mean the Board of Commissioners of the District of Columbia or their designated agents."

§ 1–804b. Rights of laborers and materialmen to sue on payment bonds—Prior notice of claim required in certain cases—Time limitations—Suit to be brought in name of District of Columbia.

(a) Every person who has furnished labor or material in the prosecution of the work provided for in such contract, in respect of which a payment bond is furnished under this Act and who has not been paid in full therefor before the expiration of a period of ninety days after the day on which the last of the labor was done or performed by him or material was furnished or supplied by him for which such claim is made, shall have the right to sue on such payment bond for the amount, or the balance thereof, unpaid at the time of institution of such suit and to prosecute said action to final judgment and execution for the sum or sums justly due him: *Provided,* That any person having direct contractual relationship with a subcontractor but no contractual relationship, express or implied, with the contractor furnishing the payment bond, shall have a right of action upon the payment bond upon giving written notice to the contractor within ninety days from the date on which such person did or performed the last of the labor, or furnished or supplied the last of the material for which such claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the material was furnished or supplied or for whom the labor was done or performed. Such notice shall be served by mailing the same by registered mail, postage prepaid, in an envelope addressed to the contractor at any place he maintains an office or conducts his business, or his residence, or in any manner in which the United States marshal for the District of Columbia is authorized by law to serve summons.

(b) Every suit instituted under this section shall be brought in the name of the District of Columbia for the use of the person suing, in the Superior Court of the District of Columbia, irrespective of the amount in controversy in such suit, but no such suit shall be commenced after the expiration of one year after the day on which the last of the labor was performed or material was supplied by him. The District of Columbia shall not be liable for the payment of any costs or expenses of any such suit. (Aug. 3, 1968, Pub. L. 90–455, § 2, 82 Stat. 628; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(3), 84 Stat. 570.)

REFERENCE IN TEXT

"This Act" referred to in subsection (a) is the act of Aug. 3, 1968, which enacted this section, sections 1–804a, and 1–804c, amended sections 1–805 to 1–807, repealed section 1–804, and enacted sections 6, 7, 8 and 9 set out as notes to this and the other enumerated sections.

AMENDMENT

1970—Section 155(c)(3) of Act July 29, 1970, Public Law 91–358, amended subsec. (b) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATE OF PUB. L. 90–455, AND RESERVATION OF RIGHTS

See § 8 of Pub. L. 90–455, set out as a note to sec. 1–804a.

TRANSFER OF FUNCTIONS TO COMMISSIONER OF THE DISTRICT

See § 9 of Pub. L. 90–455, set out as a note to sec. 1–804a.

DEFINITIONS OF TERMS USED IN PUB. L. 90–455

See § 6 of Pub. L. 90–455, set out as a note to sec. 1–804a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–921.

§ 1–804c. Certified copy of bond and contract to be furnished on application of interested parties—Copy as prima facie evidence—Fees.

The Commissioners are authorized and directed to furnish, to any person making application therefor who submits an affidavit that he has supplied labor or materials for such work and payment therefor has not been made or that he is being sued on any such bond, a certified copy of such bond and the contract for which it was given, which copy shall be prima facie evidence of the contents, execution, and delivery of the original. Applicants shall pay for such certified copies such fees as the Commissioners fix to cover the cost of preparation thereof. (Aug. 3, 1968, Pub. L. 90–455, § 3, 82 Stat. 628.)

EFFECTIVE DATE OF PUB. L. 90–455, AND RESERVATION OF RIGHTS

See § 8 of Pub. L. 90–455, set out as a note to sec. 1–804a.

TRANSFER OF FUNCTIONS TO COMMISSIONER OF THE DISTRICT

See § 9 of Pub. L. 90–455, set out as a note to sec. 1–804a.

DEFINITIONS OF TERMS USED IN PUB. L. 90–455

See § 6 of Pub. L. 90–455, set out as a note to sec. 1–804a.

§ 1–805. Contractors' bond not required for contracts not exceeding $2,000—Contracts not to be subdivided to reduce amount.

In all cases where the Commissioners of the District of Columbia contract for work or material involving a sum not exceeding $2,000, it shall not be necessary for said Commissioners to require a bond with said contract; but no work capable of execution

under a single contract, nor any purchase of material where the total expenditure involved is greater than $2,000, shall be subdivided or lessened for the purpose of reducing the sum of money to be paid therefor to less than that amount. (June 28, 1906, 34 Stat. 546, ch. 3575; June 26, 1912, 37 Stat. 168, ch. 182; Aug. 3, 1968, Pub. L. 90–455, § 4, 82 Stat. 629.)

AMENDMENT

1968—Section 4 of act Aug. 3, 1968, Pub. L. 90–455, amended section by striking "$1,000" and inserting in lieu thereof, "$2,000".

EFFECTIVE DATE OF PUB. L. 90–455, AND RESERVATION OF RIGHTS

See § 8 of Pub. L. 90–455, set out as a note to sec. 1–804a.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO COMMISSIONER OF THE DISTRICT

See § 9 of Pub. L. 90–455, set out as a note to sec. 1–804a.

DEFINITIONS OF TERMS USED IN PUB. L. 90–455

See § 6 of Pub. L. 90–455, set out as a note to sec. 1–804a.

§ 1–806. Formal contract with bond not required in contracts not exceeding $2,000.

Formal written contracts with bond for work or the purchase of supplies and materials for the District of Columbia shall not be required in cases where the cost of such work or supplies or materials does not exceed the sum of $2,000. (June 26, 1912, 37 Stat. 168, ch. 182; Aug. 3, 1968, Pub. L. 90–455, § 4, 82 Stat. 629.)

AMENDMENT

1968—Section 4 of act Aug. 3, 1968, Pub. L. 90–455, amended section by striking "$1,000" and inserting in lieu, "$2000".

EFFECTIVE DATE OF PUB. L. 90–455, AND RESERVATION OF RIGHTS

See § 8 of Pub. L. 90–455, set out as a note to sec. 1–804a.

DEFINITIONS OF TERMS USED IN PUB. L. 90–455

See § 6 of Pub. L. 90–455, set out as a note to sec. 1–804a.

§ 1–807. Retents.

On all contracts made by the District of Columbia for construction work there shall be withheld, until completion and acceptance of the work, a retent of 10 per centum of the total amount of any payments made thereunder as a guaranty fund that the terms of such contracts shall be strictly and faithfully performed: *Provided, however,* That whenever 50 per centum of the work required under a contract for construction work has been completed and payments therefor have been made the Commissioners of the District of Columbia, in their sole discretion, may authorize subsequent payments to be made to the contractor without withholding from such subsequent payments 10 per centum thereof as required by this section, or the said Commissioners may authorize retention from such subsequent payments of less than 10 per centum thereof, and whenever the work is substantially complete, the Commissioners, if they consider the amount retained to be in excess of the amount adequate for the protection of the District of Columbia, at their discretion may release to the contractor all or a portion of such excess amount; and the said Commissioners, in their sole discretion, may further authorize payment in full, including retained percentages, for each separate building or public work on which the price is stated separately in the contract upon completion and acceptance of such building or work. (Mar. 3, 1887, 24 Stat. 501, ch. 355; Mar. 31, 1906, 34 Stat. 94, ch. 1356, § 1; Aug. 3, 1949, 63 Stat. 493, ch. 386; Aug. 3, 1968, Pub. L. 90–455, § 5, 82 Stat. 629.)

AMENDMENT

1968—Section 5 of act Aug. 3, 1968, Pub. L. 90–455, amended section by inserting the following before the semicolon, ", and whenever the work is substantially complete, the Commissioners, if they consider the amount retained to be in excess of the amount adequate for the protection of the District of Columbia, at their discretion may release to the contractor all or a portion of such excess amount".

EFFECTIVE DATE OF PUB. L. 90–455, AND RESERVATION OF RIGHTS

See § 8 of Pub. L. 90–455, set out as a note to sec. 1–804a.

DEFINITIONS OF TERMS USED IN PUB. L. 90–455

See § 6 of Pub. L. 90–455, set out as a note to sec. 1–804a.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO COMMISSIONER OF THE DISTRICT

See § 9 of Pub. L. 90–455, set out as a note to sec. 1–804a.

§ 1–810. Separate contracts for material and for labor authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–811. Operation of District quarry.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–812. Use of agents in purchasing sites for schools and public buildings—Commissions—Future enlargement.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–813. Building materials may be tested by Bureau of Standards.

CODIFICATION

Section is also classified to 15 U.S.C. 281.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–814. Testing materials in laboratory of highway department.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–817. Sewerage agreement with Maryland authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–1621.

§ 1–817a. Contracts for removal of certain byproducts of the District of Columbia sewage-treatment plant.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–817c. Sewerage agreement with Virginia authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–1621.

§ 1–818. Sale of property unfit for service—Proceeds credited to appropriation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–819. Exchange of equipment on purchase of new.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–820. Reciprocal agreements for police mutual aid with authorities in Maryland and Virginia.

The Commissioner of the District of Columbia is hereby authorized in his discretion to enter into and renew reciprocal agreements, for such period as he deems advisable, with any county, municipality, or other governmental unit in the States of Maryland and Virginia, in order to establish and carry into effect a plan to provide mutual aid, through the furnishing of policemen and other agents and employees, together with all necessary equipment. (Oct. 17, 1968, Pub. L. 90–587, § 1, 82 Stat. 1150; July 29, 1970, Pub. L. 91–358, § 801, title VIII, 84 Stat. 667.)

AMENDMENT

1970—Section 801 of Act July 29, 1970, Public Law 91–358 amended section by striking out ", in the event of war, internal disorder, fire, flood, epidemic, or other public disorder which threatens or has occurred." and inserting a period in lieu thereof.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 901(b)(2) of Pub. L. 91–358, provided in part: "Title VIII [amending sec. 1–820 and repealing sec. 2–1117] shall take effect on the date of enactment of the Act [July 29, 1970]."

§ 1–821. Same; Provisions to be included in agreements.

The District of Columbia shall not enter into any such agreement unless the agreement provides that each of the parties to such agreement shall (1) waive any and all claims against all the other parties thereto which may arise out of their activities outside their respective jurisdictions under such agreement; (2) indemnify and save harmless the other parties to such agreement from all claims by third parties for property damage or personal injury which may arise out of the activities of the other parties to such agreement outside their respective jurisdictions under such agreement. (Oct. 17, 1968, Pub. L. 90–587, § 2, 82 Stat. 1150.)

§ 1–822. Same; District police and other personnel to retain all benefits provided by District Government.

The policemen and other officers, agents, and employees of the District, when acting hereunder or under other lawful authority beyond the territorial limits of the District, shall have all of the pension, relief, disability, workmen's compensation, and other benefits enjoyed by them while performing their respective duties within the District of Columbia. (Oct. 17, 1968, Pub. L. 90–587, § 3, 82 Stat. 1150.)

§ 1–823. Same; Commissioner to direct out of District police and other personnel—Enforcement of District laws by out of District police and personnel.

The Commissioner of the District of Columbia shall be responsible for directing the activities of all policemen and other officers and agents coming into the District pursuant to any such reciprocal agreement, and the Commissioner is empowered to authorize all policemen and other officers and agents from outside the District to enforce the laws applicable in the District to the same extent as if they were duly authorized officers and members of the Metropolitan Police force of the District of Columbia. (Oct. 17, 1968, Pub. L. 90–587, § 4, 82 Stat. 1150.)

§ 1–824. Contracts for inspection, maintenance and repair of fixed equipment.

That the Commissioner of the District of Columbia is authorized to enter into contracts for periods not exceeding three years for the inspection, maintenance, and repair of fixed equipment in buildings owned by the District of Columbia. (Oct. 12, 1968, Pub. L. 90–573, § 1, 82 Stat. 1004.)

Chapter 9.—CLAIMS AGAINST DISTRICT

§ 1–901. Service of process.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–902. Settlement of claims and suits against the District of Columbia—Cases that may be settled—Defenses.

The Commissioners of the District of Columbia are empowered to settle, in their discretion, claims and suits, either at law or in equity, against the District of Columbia whenever the cause of action—

(a) Arises out of the negligence or wrongful act, either of commission or omission, of any officer or employee of the District of Columbia for whose negligence or acts the District of Columbia, if a private individual, would be liable prima facie to respond in damages, irrespective of whether such negligence occurred or such acts were done in the performance of a municipal or a governmental function of said District: *Provided, however,* That nothing herein contained shall be construed as depriving the District of Columbia of any defense it may have to any suit, either at law or in equity, which may be instituted against it or to give any person, corporation, partnership, or association any right to institute any suit against the District of Columbia which did not exist prior to June 5, 1930.

(b) Arises out of the existence of facts and circumstances which place the claim or suit within the doctrines and principles of law decided by the courts in the District of Columbia or by the Supreme Court of the United States to be controlling in the District of Columbia. (Feb. 11, 1929, 45 Stat. 1160, ch. 173, § 1; June 5, 1930, 46 Stat. 500, ch. 400; July 29, 1970, Pub. L. 91–358, title I, § 157(e)(1), 84 Stat. 575.)

AMENDMENT

1970—Section 157(e)(1) of Act July 29, 1970, Public Law 91–358 amended par. (b) by striking out "court of the District of Columbia" and inserting in lieu thereof "courts in the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

Settlement of claims against District by officers and employees thereof, for damage to, or loss of, personal property, see 31 U.S.C. 241(f).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1–903.

§ 1–903. Refund of taxes when similar assessments have been held void by court decisions—Limitations.

The Commissioners of the District of Columbia are hereby authorized and empowered to grant relief in claims for refund of taxes paid, or for cancelation of assessments heretofore made and subsequent to September 1, 1916, in such cases where like assessments, or assessments against property of similar character, have been held to be void or erroneous by decision of the courts in the District of Columbia or the Supreme Court of the United States: *Provided,* That any claims for refunds of taxes paid before February 11, 1929, or for cancelations of assessments before February 11, 1929, shall be filed within one year from February 11, 1929.

Nothing contained in sections 1–902 to 1–905 shall be construed as reducing the period of the statute of limitations. (Feb. 11, 1929, 45 Stat. 1160, ch. 173, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 157(e)(2), 84 Stat. 575.)

AMENDMENT

1970—Section 157(e)(2) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia, the United States Court of Appeals for the District of Columbia," and inserting in lieu thereof "courts in the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–904. Settlements limited to $10,000—Report to Congress—Appropriations authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–905. Effective date.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1–903.

§ 1–906. Authority to compromise claim or suit—Limitations.

Upon a report by the corporation counsel of the District of Columbia showing in detail the just and true amount and condition of any claim or suit which the District of Columbia may on July 31, 1951, or thereafter have against any person, firm, association, or corporation, and the terms upon which the same may be compromised, and stating that in his opinion a compromise of such claim or suit would be for the best interest of the District of Columbia, the Commissioners of the District of Columbia be, and they hereby are, authorized to compromise such claim or suit accordingly: *Provided, however,* That no claim or suit so compromised, except with the approval of the court having probate jurisdiction, a claim or suit under section 19–701 of the District of Columbia Code, shall be reduced by an amount greater than $10,000: *And provided further,* That this section shall not apply to claims or suits for taxes or special assessments. (Feb. 11, 1929, 45 Stat. 1161, ch. 173, § 5, as added by act of July 31, 1951, 65 Stat. 131, ch. 274, § 2; and amended, June 28, 1967, 81 Stat. 81, Pub. L. 90–33, § 1; July 29, 1970, Pub. L. 91–358, § 158(f), title I, 84 Stat. 577.)

AMENDMENTS

1970—Section 158(f) of Act July 29, 1970, Public Law 91–358 amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction".

1967—Act June 28, 1967, amended section by inserting after the word "compromised" in the first proviso the following ", except with the approval of the United States District Court for the District of Columbia, a claim or suit under section 19–701 of the District of Columbia Code,".

EFFECTIVE DATE OF AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NON-LIABILITY OF DISTRICT EMPLOYEES

§ 1–921. Definitions.

As used in sections 1–921 to 1–926 the term—

* * * * *

(b) "Court" means the court in the District of Columbia having the necessary civil jurisdiction pursuant to section 11–501 or 11–921 of the District of Columbia Code.

* * * * *

(As amended, July 29, 1970, Pub. L. 91–358, § 157(h), title I, 84 Stat. 575.)

AMENDMENT

1970—Section 157(h) of Act July 29, 1970, Public Law 91–358 amended paragraph (b) to read as above set out. For provisions of subsection before this amendment, see 1967 edition of the Code.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–925. Action against District employees barred for negligent operation of vehicles—Exception.

NOTES TO DECISIONS

Action against co-employee

A passenger-schoolteacher who was riding with driver-schoolteacher to a meeting at time of collision resulting from driver-schoolteacher's negligence was precluded under D.C. Employees Non-Liability Act, from bringing action against driver-schoolteacher even though under Federal Employees' Compensation Act she was only barred from bringing action against school district. *F. P. Davis et ano.* v. *P. O. Harrod et ano.* (1969, 407 F. 2d 1280, 132 U.S. App. D.C. 345).

Chapter 10.—NATIONAL CAPITAL PLANNING COMMISSION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 9–220.

§ 1–1002. The Commission—Composition—Functions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–1004. Comprehensive plan for the National Capital—Elements—Procedure.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(28) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, relating to consultations concerning the formation of one or more citizen advisory councils under subsection (e) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7–942.

NOTES TO DECISIONS

Administrative finding—reasonableness

Administrative finding that the Three Sisters Bridge project is based on continuing comprehensive transportation planning process carried on cooperatively by states and local communities was reasonable and supported, though the project was rejected as unnecessary and undesirable by the National Capital Planning Commission. *D.C. Federation of Civic Associations, Inc., et al.* v. *J. A. Volpe et al.* (1970, 316 F. Supp. 754).

§ 1–1005. Proposed Federal and District developments and projects.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(29) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (c) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7–951.

§ 1–1006. Thoroughfare plan.

ABOLISHMENT OF JOINT BOARD CREATED UNDER SECTION 40–603(e)

Section 503(c) of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"The joint board authorized and created by section 6(e) of the Act of March 3, 1925, 43 Stat. 1121, as amended (D.C. Code, sec. 40–603(e)), together with its functions, is hereby abolished."

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(30 and 31) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (a) and (b) relating to approving a major thoroughfare plan or parts thereof or revisions thereof, and proposing revision of the major thoroughfare plan or parts thereof, and consulting with National Planning Commission, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

NOTES TO DECISIONS

Administrative finding—reasonableness

Administrative finding that the Three Sisters Bridge project is based on continuing comprehensive transportation planning process carried on cooperatively by states and local communities was reasonable and supported, though the project was rejected as unnecessary and undesirable by the National Capital Planning Commission. *D.C. Federation of Civic Associations, Inc., et al.* v. *J. A. Volpe et al.* (1970, 316 F. Supp. 754).

§ 1–1007. Public works program.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(32) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–1008. Zoning and subdivision functions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–1012. Appropriation for acquisition of such lands—Control—Use.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 11.—ELECTIONS

Sec.

1–1101. Election of electors of President and Vice President, Delegate, the members of the Board of Education, and officials of political parties.

1–1108. Candidates for office—Form and date for filing petitions—Number of signatures required—Arrangement of ballot—Nominations for presidential electors—Names of candidates for President and Vice President to appear on ballot under party designation—Form of ballot—Candidates for electors not to appear on ballot—Nominations by nonqualifying political parties—Qualifications of electors—Nomination and election of Delegate to House of Representatives—Election of candidates by primary or party runoff election—Nominating petition—Filing fee—Arrangement of names on ballot—Disregarding certain signatures on nominating

Sec.
1–1108. Candidates for office.—Continued petitions—Designations of offices of local party committees—Nominating petition for election of members of Board of Education—Filing fee—Rules relating to Board of Education petitions—Posting of petitions in a public place—Challenging validity of petition—Board of Elections to determine validity of petitions—Appeal—Arrangement of names on ballot.
1–1109. Method of voting—Place—Watchers—Challenging of votes—Appeal from challenged ballots—Handicapped and absent voters—Voting in party elections—Election of unopposed candidates—Availability of regulations.
1–1110. Dates for holding elections—Voting hours—Method of deciding tie votes—Naming successor to official who dies, resigns, or is unable to serve—Votes cast for President and Vice President to be counted as votes for presidential electors—Election of ward and at large members of Board of Education—Runoff elections—Filling of vacancies on Board of Education.
1–1111. Petition for recount by candidate—Procedure—Expenses—Petition for recount by voter to District of Columbia Court of Appeals—Grounds for voiding election.
1–1115. Candidacy for more than one office not permitted—Choice of nominations—Withdrawal from multiple nominations.

§ 1–1101. Election of electors of President and Vice President, Delegate, the members of the Board of Education, and officials of political parties.

In the District of Columbia electors of President and Vice President of the United States, the Delegate to the House of Representatives, the members of the Board of Education, and the following officials of political parties in the District of Columbia shall be elected as provided in this chapter:

(1) National committeemen and national committee women;

(2) Delegates to conventions of political parties nominating candidates for the Presidency and Vice Presidency of the United States; and

(3) Such members and officials of local committees of political parties as may be designated by the duly authorized local committees of such parties for election at large in the District of Columbia.

(Aug. 12, 1955, 69 Stat. 699, ch. 862, § 1; Oct. 4, 1961, 75 Stat. 817, Pub. L. 87–389, § 1(1); Apr. 22, 1968, Pub. L. 90–292, § 4(1), 82 Stat. 103; Sept. 22, 1970, Pub. L. 91–405, title II, § 205(e)(1), 84 Stat. 853.)

AMENDMENTS

1970—Section 205(e)(1) of act Sept. 22, 1970, Pub. L. 91–405, amended the section as follows:

(1) By inserting ", the Delegate to the House of Representatives" after "Vice President of the United States".

(2) By inserting "and" after the semicolon in clause (2).

(3) By striking out clause (3) and redesignating clause (4) as clause (3).

1968—Section 4(1) of act Apr. 22, 1968, Pub. L. 90–292, amended section by inserting immediately after "Vice President of the United States" the words "the members of the Board of Education."

1961—Section 1(1), act Oct. 4, 1961, amended the section by inserting at the beginning thereof the words: "In the District of Columbia electors of President and Vice President of the United States and".

Section 1(25), act Oct. 4, 1961, amended the title of the chapter to read as follows: "An Act to regulate the election in the District of Columbia of electors of President and Vice President of the United States and of delegates representing the District of Columbia to national political conventions, and for other purposes."

EFFECTIVE DATE OF TITLE II OF PUB. L. 91–405

Section 206(b) of title II of Pub. L. 91–405, provided: "This title and the amendments made by this title [enacting secs. 1–291 and 1–292 and provisions set out as a note to sec. 1–291, amending secs. 1–1101, 1–1102, 1–1104, 1–1108, 1–1109, 1–1110, 1–1113, 1–1114, and 25–107, and amending various sections of the U.S. Code] shall take effect on the date of its enactment [Sept. 22, 1970].

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

Section 6(a)[1], act Apr. 22, 1968, Pub. L. 90–292, provided: "The amendments made by this Act [For enumeration of amendments and enactments made by this Act, see Short Title notes under this section and 31–101] shall take effect on May 15, 1968, except that—

"(1) the Board of Education of the District of Columbia, appointed under the Act of June 20, 1906 [section 31–101 et seq.] (as in effect on the date of the enactment of this Act), shall continue to exercise the powers, functions, duties vested in it under such Act (as in effect on such date);

"(2) vacancies in such Board shall be filled by appointment in accordance with such Act (as in effect on such date); and

"(3) the members of such Board appointed under such Act (as in effect on such date) shall continue in office;

until such time as at least six of the members first elected to the Board of Education (under such Act as amended by this Act) take office."

SHORT TITLE

Section 16 of act Aug. 12, 1955, ch. 862, as added Apr. 22, 1968, by Pub. L. 90–292, § 4(9) provided:

"This Act (enacting this chapter) may be cited as the 'District of Columbia Election Act'."

See also Short Title note under section 31–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1–1108.

§ 1–1102. Definitions.

For the purposes of this chapter—

(1) The term "District" means the District of Columbia.

(2) The term "qualified elector" means a citizen of the United States (a) who does not claim voting residence or right to vote in any State or Territory; and who, for the purpose of voting in an election under this chapter, has resided or has been domiciled in the District continuously since the beginning of the one-year period ending on the day of such election; (b) who is, or will be on the day of the next election, twenty-one years old; (c) who has never been convicted of a felony in the United States, or if he has been so convicted, has been pardoned; and (d) who is not mentally incompetent as adjudged by a court of competent jurisdiction.

(3) The term "Board" means the Board of Elections for the District of Columbia provided for by section 1–1103.

(4) The term "ward" means a school election ward established by the Board under section 1–1105(a)(4).

(5) The term "Board of Education" means the Board of Education of the District.

(6) The term "Delegate" means the Delegate to the House of Representatives from the District of Columbia.

(Aug. 12, 1955, 69 Stat. 699, ch. 862, § 2; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87–389, § 1(26); Apr. 22,

[1] There are no other subsections in section 6.

1968, Pub. L. 90–292, § 4(2), 82 Stat. 103; Sept. 22, 1970, Pub. L. 91–405, title II, §§ 203(a), 205(a), 84 Stat. 849, 853.)

AMENDMENTS

1970—Par. (2)(a). Section 205(a) of act Sept. 22, 1970, Pub. L. 91–405, amended par. (2)(a) by inserting "or has been domiciled" after "has resided".

Par. (6). Section 203(a) of act Sept. 22, 1970, Pub. L. 91–405, added par. (6) to read as above set out.

1967—Section 4(2) of act Apr. 22, 1968, Pub. L. 90–292, amended section by inserting paragraphs (4) and (5).

1961—Act Oct. 4, 1961, substituted the words "and who, for the purpose of voting in an election under this chapter, has resided in the District continuously since the beginning of the one-year period ending on the day of such election" for the words "and who has resided in the District continuously since beginning of the one-year period ending on the day of the next election, or, if such period has not begun, resides in the District" in clause (a) of par. (2) of the section.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment of section by Pub. L. 91–405, effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as a note to sec. 1–1101.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note under § 1–1101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1–291, 31–101.

§ 1–1103. Board of elections—Terms of office.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1–1102.

§ 1–1104. Qualifications and compensation of members.

* * * * *

(b) Each member of the Board shall be paid compensation at the rate of $50 per day, with a limit of $2,500 per annum, while performing duties under this chapter. Except as provided in subsection (a) no person shall be ineligible to serve or to receive compensation as a member of the Board because he occupies another office or position or because he receives compensation (including retirement compensation) from another source. The right to compensation from another source otherwise secured to such a person under the laws of the United States shall not be abridged by the fact of his service or receipt of compensation as a member of the Board, or as an employee of the Board. (As amended Sept. 22, 1970, Pub. L. 91–405, title II, § 205(i), 84 Stat. 854.)

AMENDMENTS

1970—Section 205(i) of act Sept. 22, 1970, Pub. L. 91–405, amended the first sentence of subsec. (b) by increasing from $25 to $50 the daily rate of compensation, and inserted a limit of $2,500 per annum.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment of section by Pub. L. 91–405, effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as a note to sec. 1–1101.

§ 1–1105. Functions and authority of Board.

(a) The Board shall—

(1) maintain a registry, keeping it accurate and current;

(2) conduct registrations and elections;

(3) provide for recording and counting votes by means of ballots or machines or both and not less than five days before each election held pursuant to this chapter, publish in one or more newspapers of general circulation in the District a copy of the official ballot to be used in any such election;

(4) divide the District into appropriate voting precincts, each of which shall contain at least three hundred and fifty registered persons; divide the District into eight compact and contiguous school election wards which shall include such numbers of precincts as will provide approximately equal population within each ward; and reapportion the wards accordingly after each decennial census;

(5)–(8) * * *

(b)–(d) * * *

(As amended Apr. 22, 1968, Pub. L. 90–292, § 4(3), 82 Stat. 103.)

AMENDMENTS

1968—Section 4(3), act Apr. 22, 1968, Pub. L. 90–292, amended section by inserting immediately before the semicolon in paragraph (a)(4) the matter relating to establishment of eight compact and contiguous school election wards and reapportionment thereof.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note under § 1–1101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1–1102.

§ 1–1106. Board independent agency—District to furnish facilities to Board—Seal.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–1107. Registration—Conditions for registration—Registration affidavit—Registration period—Appeal.

(a) A person shall be entitled to vote in an election in the District of Columbia only if he is a qualified elector and, except as provided in subsection (e) of this section, he is duly registered in the District on the date of such election. A person shall be considered duly registered in the District if he registers under this chapter after January 1, 1968, and if after the date he registers no four-year period elapses during which he fails to vote in an election held under this chapter;

(b), (c) * * *

(d)(1) The registry shall be open during reasonable hours, except that the registry shall not be open (A) during the thirty-day period ending on the first Tuesday following the first Monday in November of each odd-numbered calendar year and of each presidential election year, (B) during the thirty-day period ending on the first Tuesday in May in each presidential election year, and (C) during such other period as the Board may provide in the case of a special election.

(2) The Board may close the registry on Saturdays, Sundays, and holidays. While the registry is open,

any person may apply for registration or change his registration.

(e) If a person is not permitted to register, such person, or any qualified candidate, may appeal to the Board, but not later than three days after the registry is closed for the next election. The Board shall decide within five days after the appeal is perfected whether the challenged elector is entitled to register. If the appeal is denied, the appellant may, within three days after such denial, appeal to the Superior Court of the District of Columbia. The decision of such court shall be final and not appealable. If the appeal is upheld by either the Board or the court, the challenged elector shall be allowed to register immediately. If the appeal is pending on election day, the challenged elector may cast a ballot marked "challenged", as provided in section 1–1109 (d). (Aug. 12, 1955, 69 Stat. 700, ch. 862, § 7; Oct. 4, 1961, 75 Stat. 817, 818, Pub. L. 87–389, § 1 (8, 9, 10, 11); July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; Apr. 22, 1968, Pub. L. 90–292, § 4(4), 82 Stat. 103; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (e) by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

1968—Section 4(4), act Apr. 22, 1968, Pub. L. 90–292, amended subsection (a) by striking out "he registers in the District during the year in which such election is to be held.", and inserted in lieu thereof the matter above set out in subsection (a) relating to registration. Section 4(4), of said act amended subsection (d) to read as above set out in subsection (d)(1), (d)(2) with respect to periods for keeping registry open; and by striking in subsection (e) "Municipal Court for the District of Columbia" and inserting "District of Columbia Court of General Sessions."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note under § 1–1101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1–1108.

§ 1–1108. Candidates for office—Form and date for filing petitions—Number of signatures required—Arrangement of ballot—Nominations for presidential electors—Names of candidates for President and Vice President to appear on ballot under party designation—Form of ballot—Candidates for electors not to appear on ballot—Nominations by nonqualifying political parties—Qualifications of electors—Nomination and election of Delegate to House of Representatives—Election of candidates by primary or party runoff election—Nominating petition—Filing fee—Arrangement of names on ballot—Disregarding certain signatures on nominating petitions—Designations of offices of local party committees—Nominating petition for election of members of Board of Education—Filing fee—Rules relating to Board of Education petitions—Posting of petitions in a public place—Challenging validity of petition—Board of Elections to determine validity of petitions—Appeal—Arrangement of names on ballot.

(a) Candidates for office participating in an election of the officials referred to in clauses (1) and (2) of section 1–1101 and of officials designated pursuant to clause (3) of such section shall be the persons registered under section 1–1107 who have been nominated for such office by a petition—

(1) prepared and presented to the Board in accordance with rules prescribed by the Board, but not later than forty-five days before the date of the election; and

(2) signed by not less than two hundred voters, registered under section 1–1107, and of the same political party as the nominee.

(b) * * *

(c) Except as otherwise provided, the Board shall arrange the ballot of each political party so as to enable the voters of such party—

(1) to vote, in any election of officials referred to in clauses (1) and (2) of section 1–1101 and of officials designated pursuant to clause (3) of such section, separately or by slates for the candidates duly qualified and nominated for election to each such office or group of offices by such party under subsections (a) and (b) of this section; and

(2) to answer in the affirmative or negative such questions relating to the conduct of the affairs of such party as the duly authorized local committee of such party may file with the Board in writing: *Provided, however,* That the questions shall be so filed not later than thirty days before the date of the election.

(d)–(g) * * *

(h) The Delegate shall be elected by the people of the District of Columbia in a general election. The nomination and election of the Delegate and the candidates for office of Delegate shall be governed by the provisions of this chapter. Each candidate for the office of Delegate in any general election shall, except as otherwise provided in subsection (j) of this section and in section 1–1110(d), have been elected as such a candidate by the next preceding primary or party runoff election. No political party shall be qualified to hold a primary election to select candidates for election to the office of Delegate in a general election unless, in the next preceding election year, at least seven thousand five hundred votes were cast in the general election for a candidate of such party for the office of Delegate or for its candidates for electors of President and Vice President.

(i) Each candidate in a primary election for the office of Delegate shall be nominated for such office by a petition (1) filed with the Board not later than forty-five days before the date of such primary election; (2) signed by at least two thousand persons who are duly registered under section 1–1107 and who are of the same political party as the nominee; and (3) accompanied by a filing fee of $100. Such fee may be refunded only in the event that the candidate withdraws his nomination by writing received by the Board not later than three days after the date on which nominations are closed under this subsection. A nominating petition for a candidate in a primary election for the office of Delegate may not be circulated for signature before the ninety-ninth day preceding the date of such election and may not be filed with the Board before the seventieth day preceding such date. The Board may prescribe rules with respect to the preparation and presentation of nominating petitions and the posting and disposition of filing fees. The Board shall arrange the ballot of each political party in each such primary election so as to enable a voter of such party

to vote for any one duly nominated candidate of that party for the office of Delegate.

(j)(1) A duly qualified candidate for the office of Delegate may, subject to the provisions of this subsection, be nominated directly as such a candidate for election in the next succeeding general election for such office (including any such election to be held to fill a vacancy). Such person shall be nominated by a petition (A) filed with the Board not less than forty-five days before the date of such general election; (B) signed by duly registered voters equal in number to 2 per centum of the total number of registered voters of the District, as shown by the records of the Board as of ninety-nine days before the date of such election, or by five thousand persons duly registered under section 1–1107, whichever is less; and (C) accompanied by a filing fee of $100. Such fee may be refunded only in the event that the candidate withdraws his nomination by writing received by the Board not later than three days after the date on which nominations are closed under this subsection. No signatures on such a petition may be counted which have been made on such petition more than ninety-nine days before the date of such election.

(2) Nominations under this subsection for candidates for election in a general election for the office of Delegate shall be of no force and effect with respect to any person whose name has appeared on the ballot of a primary election for such office held within eight months before the date of such general election.

(k) In each general election for the office of Delegate, the Board shall arrange the ballots so as to enable a voter to vote for any one of the candidates for such office who (1) has been duly elected by any political party in the next preceding primary or party runoff election for such office, (2) has been duly nominated to fill vacancies in such office pursuant to section 1–1110(d), or (3) has been nominated directly as a candidate under subsection (j) of this section.

(*l*) The signature of a registered voter on any petition filed with the Board and nominating a candidate for election in a primary or general election to any office shall not be counted if, after receipt of a timely challenge to such effect, the Board determines such voter also signed any other valid petition, filed earlier with the Board, and nominating the same or any other candidate for the same office in the same election.

(m) Designations of offices of local party committees to be filled by election pursuant to clause (3) of section 1–1101 shall be effected by written communications filed with the Board not later than ninety days before the date of such election.

(n)(1) Except in the case of the three members of the Board of Education elected at large, the members of the Board of Education shall be elected by the qualified electors of the respective wards of the District from which the members have been nominated.

(2) In the case of the three members of the Board of Education elected at large, each such member shall be elected by the qualified electors of the District.

(*o*) Each candidate in a general election for member of the Board of Education shall be nominated for such office by a petition (A) filed with the Board not later than forty-five days before the date of such general election; (B) signed by at least two hundred and fifty persons who are duly registered under section 1–1107 in the ward from which the candidate seeks election, or in the case of a candidate running at large, signed by at least one hundred and twenty-five persons in each ward of the District who are duly registered in such ward; and (C) accompanied by a filing fee of $100. Such fee may be refunded only in the event that the candidate withdraws his nomination by writing received by the Board not later than three days after the date on which nominations are closed. A nominating petition for a candidate in a general election for member of the Board of Education may not be circulated for signatures before the ninety-ninth day preceding the date of such election and may not be filed with the Board before the seventieth day preceding such date. The Board may prescribe rules with respect to the preparation and presentation of nominating petitions and the posting and disposition of filing fees. In a general election for members of the Board of Education, the Board shall arrange the ballots in each ward to enable a voter registered in that ward to vote for any one candidate duly nominated to be elected to such office from such ward, and to vote for as many candidates duly nominated for election at large to such office as there are Board of Education members to be elected at large in such election.

(p)(1) The Board is authorized to accept any nominating petition for a candidate for any office as bona fide with respect to the qualifications of the signatories thereto if the original or facsimile thereof has been posted in a suitable public place for the ten-day period beginning on the forty-second day before the date of the election for such office. Any qualified elector may within such ten-day period challenge the validity of any petition by a written statement duly signed by the challenger and filed with the Board and specifying concisely the alleged defects in such petition. Copy of such challenge shall be sent by the Board promptly to the person designated for the purpose in the nominating petition.

(2) The Board shall receive evidence in support of and in opposition to the challenge and shall determine the validity of the challenged nominating petition not more than eight days after the challenge has been filed. Within three days after announcement of the determination of the Board with respect to the validity of the nominating petition, either the challenger or any person named in the challenged petition as a nominee may apply to the District of Columbia Court of Appeals for a review of the reasonableness of such determination. The court shall expedite consideration of the matter and the decision of such court shall be final and not appealable.

(q) In any election, the order in which the names of the candidates for office appear on the ballot shall be determined by lot, upon a date or dates and under regulations prescribed by the Board. (As amended Apr. 22, 1968, Pub. L. 90–292, § 4(5), 82 Stat. 103; Sept. 22, 1970, Pub. L. 91–405, title II, § 203(b), 205(b), (e)(2), (f), 84 Stat. 849, 853, 854.)

AMENDMENTS

1970—Subsec. (a). Section 205(e)(2) of act Sept. 22, 1970, Pub. L. 91–405, amended subsec. (a) by striking out "clauses (1), (2), and (3)" and "clause (4)" and inserting in lieu thereof "clauses (1) and (2)" and "clause (4)", respectively.

Subsec. (a)(2). Section 205(b) of such act amended subsec. (a)(2) by striking out "one hundred" and inserting "two hundred" in lieu thereof.

Subsec. (c). Section 205(f) of such act amended subsec. (c) by striking out "The Board shall" and inserting in lieu thereof "Except as otherwise provided, the Board shall", and by amending paragraph (1) to read as above set out.

Subsecs. (h)–(q). Sections 203(b) of such act redesignated subsecs. (h)–(k) as subsecs. (n)–(q) and inserted new subsecs. (h)–(*m*).

1968—Section 4(5), act Apr. 22, 1968, Pub. L. 90–292, amended section by striking out in subsection (a)(1) "thirty days" and inserting in lieu thereof "forty-five days," and by adding at the end thereof subsections (h), (i), (j) and (k).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment of section by Pub. L. 91–405, effective Sept. 22, 1970, see sec. 206(b) of Pub. L. 91–405, set out as a note to sec. 1–1101.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note under § 1–1101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1–1109, 1–1110.

NOTES TO DECISIONS

Scope of review

Since board of elections has undertaken to define and apply its own regulations, Court of Appeals is governed by prescribed reasonableness standard and cannot substitute its own judgment for reasonable board action. *In re Challenge to Nominating Petitions of E. Haworth, E. M. Washington and F. M. McCoy* (D.C. App. 1969, 258 A. 2d 447).

Congress having provided judicial review of action of District of Columbia Board of Elections, did not intend to permit Board to finally decide questions of law, and prescribed standard for review permitted Court of Appeals to determine such issues. *Id.*

Time limitation for determining validity of challenge

This section which provides that board of elections shall determine validity of challenges to nominating petitions not more than eight days after challenge has been filed is directory only, and where eighth day fell on Saturday and determination was postponed to following Monday, delay beyond the eight-day period did not deprive board of jurisdiction to rule upon pending challenges. *In re Challenge to Nominating Petitions of E. Haworth, E. N. Washington and F. M. McCoy* (D.C. App. 1969, 258 A. 2d 447).

Validity of petition

A candidate for election to board of education failed to qualify because a group of signatures on his nominating petition from one ward were invalid because signers were not registered in District of Columbia at time of signing, leaving petition with less than requisite 125 signatures from ward. *In re Challenge to Nominating Petitions of E. Haworth, E. N. Washington and F. M. McCoy* (D.C. App. 1969, 258 A. 2d 447).

Nominating petition of a candidate for board of education which was invalid because of lack of requisite number of valid signatures was not validated by list of additional names presented after filing. *Id.*

Validity of signatures

A candidate for board of education was required to file a nominating petition signed by at least 125 persons in each ward and petition contained some signatures of persons registered in District of Columbia and living in a designated ward who, by virtue of previous residence, were on rolls of another ward, filing of the petition constituted notice to board of elections of signers' changes of address, and signatures were properly counted as valid. *In re Challenge to Nominating Petitions of E. Haworth, E. M. Washington and F. M. McCoy* (D.C. App. 1969, 258 A. 2d 447).

A person who is not registered in District of Columbia when signing a petition could not validly sign nominating petition for candidate and then register after petition was filed with board of elections. *Id.*

§ 1–1109. Method of voting—Place—Watchers—Challenging of vote—Appeal from challenged ballots—Handicapped and absent voters—Voting in party elections—Election of unopposed candidates—Availability of regulations.

(a) Voting in all elections shall be secret.

(b) Except as otherwise provided by regulation of the Board, the vote of a person who is registered as a resident of the District shall be valid only if cast in the voting precint where the residence shown on his registration is located. The Board shall by regulation permit voting by any registered elector who is absent from the District or who, because of his physical condition, is unable to vote in person at the polling place in his voting precinct on election day.

(c) Any group of qualified electors interested in the outcome of an election may, not less than two weeks prior to such election, petition the Board for credentials authorizing watchers at one or more polling places at the next election during voting hours and until the count has been completed. The Board shall formulate rules and regulations not inconsistent with this chapter to prescribe the form of watchers' credentials, to govern the conduct of such watchers, and to limit the number of watchers so that the conduct of the election will not be unreasonably obstructed. Subject to such rules and regulations, watchers may challenge prospective voters whom the watchers believe to be unqualified to vote.

(d) If the official in charge of the polling place, after hearing both parties to any such challenge or acting on his own initiative with respect to a prospective voter, reasonably believes the prospective voter is unqualified to vote, he shall allow the voter to cast a paper ballot marked "challenged". Ballots so cast shall be segregated, and no such ballot shall be counted until the challenge has been removed as provided in subsection (e).

(e) If a person has been permitted to vote only by challenged ballot, such person, or any qualified candidate, may appeal to the Board within three days after election day. The Board shall decide within seven days after the appeal is perfected whether the voter was qualified to vote. If the appeal is denied, the appellant may within three days of such denial appeal to the Superior Court of the District of Columbia. The decision of such court shall be final and not appealable. If the Board decides that the voter was qualified to vote, the word "challenged" shall be striken from the voter's ballot and the ballot shall be treated as if it had not been challenged.

(f) If a qualified elector is unable to record his vote by marking the ballot or operating the voting machine an official of the polling place shall, on the request of the voter, enter the voting booth and comply with the voter's directions with respect to recording his vote. Upon the request of any such voter, a second official of the polling place shall also enter the voting booth and witness the recordation of the voter's directions. The official or officials shall

in no way influence or attempt to influence the voter's decisions, and shall tell no one how the voter voted. The official in charge of the voting place shall make a return of all such voters, giving their names and disabilities.

(g) No person shall vote more than once in any election nor shall any person vote in a primary or party runoff election held by a political party other than that to which he has declared himself to be a member.

(h) In the event that the total number of candidates of one party nominated to an office or group of offices of that party pursuant to section 1–1108(a) or 1–1108(i) does not exceed the number of such offices to be filled, the Board may, prior to election day and, notwithstanding the provisions of section 1–1108(c) or 1–1108(i), declare the candidates so nominated to be elected without opposition, in which case the fact of their election pursuant to this paragraph shall appear for the information of the voters on any ballot prepared by the Board for their party for the election of other candidates in the same election.

(i) Copies of the regulations of the Board with respect to voting shall be made available to prospective voters at each polling place. (Aug. 12, 1955, 69 Stat. 702, ch. 862, § 9; Oct. 4, 1961, 75 Stat. 819, Pub. L. 87–389, § 1(14, 15, 16, 17); July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; Apr. 22, 1968, Pub. L. 90–292, § 4(6), 82 Stat. 104; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570; Sept. 22, 1970, Pub. L. 91–405, title II, § 205(c), (d), (g), (h), (l), 84 Stat. 853, 854, 855.)

AMENDMENTS

1970—Subsec. (b). Section 205(c) of act Sept. 22, 1970, Pub. L. 91–405, amended subsec. (b) by striking out "The vote" and inserting in lieu thereof "Except as otherwise provided by regulation of the Board, the vote".

Subsec. (c). Section 205(g) of such act amended subsec. (c) to read as above set out.

Subsec. (f). Section 205(d) of such act amended subsec. (f) by striking out the first two sentences and inserting in lieu thereof three new sentences to read as above set out.

Subsec. (g). Section 205(l) of such act amended subsec. (g) to read as above set out.

Subsecs. (h)–(i). Section 205(h) of such act redesignated subsec. (h) as subsec. (i), and inserted a new subsec. (h) to read as above set out.

Section 155(a) of Act July 29, 1970. Public Law 91–358 amended subsec. (e) by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

1968—Section 4(6), act Apr. 22, 1967, Pub. L. 90–292, amended subsection (b) by striking out "for electors of President and Vice President"; and subsection (e) by striking "Municipal Court for the District of Columbia" and inserting "District of Columbia Court of General Sessions."

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–405

Amendment of section by Pub. L. 91–405, effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as a note to sec. 1–1101.

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note under § 1–1101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1–1114.

NOTES TO DECISIONS

Absentee ballots

It was error for the board to refuse to count absentee ballots which were postmarked after election day which fell on November 4, inasmuch as absentee ballots were not mailed by the board of elections until November 2 together with instructions to voters that ballots must be returned by November 10 but without mention of requirement that ballots be postmarked on election day. *T. F. Curtis* v. *J. E. Bindeman, et al., and C. I. Cassell* (D.C. App. 1970, 261 A. 2d 515).

Construction

Section 1–1109 provision that vote shall be valid only if cast in voting precinct where residence shown on voter's registration is located should be liberally construed so as not to deny innocent voters their right to vote, or to upset an election for technical reasons. *T. F. Curtis* v. *J. E. Bindeman, et al., and C. I. Cassell* (D.C. App. 1970, 261 A. 2d 515).

The court held that it was not error to count ballots which were marked in voting precincts other than precincts in which voters resided where ballots were assigned to and counted by board as if they had actually been marked and deposited in voters' precinct and there were no instances of double voting. *Id.*

§ 1–1110. Dates for holding elections—Voting hours—Method of deciding tie votes—Naming successor to official who dies, resigns, or is unable to serve—Votes cast for President and Vice President to be counted as votes for presidential electors—Election of ward and at large members of Board of Education—Runoff elections—Filling of vacancies on Board of Education.

(a)(1) The elections of the officials referred to in clauses (1) and (2) of section 1–1101 and of officials designated pursuant to clause (3) of such section shall be held on the first Tuesday in May of each presidential election year.

(2) The electors of President and Vice President of the United States shall be elected on the Tuesday next after the first Monday in November in every fourth year succeeding every election of a President and Vice President of the United States. Each vote cast for a candidate for President or Vice President whose name appears on the general election ballot shall be counted as a vote cast for the candidates for presidential electors of the party supporting such presidential and vice presidential candidate. Candidates receiving the highest number of votes in such election shall be declared the winners, except that in the case of a tie it shall be resolved in the same manner as is provided in subsection (c) of this section.

(3) Except as otherwise provided in the case of special elections under this chapter or section 206(a) of the District of Columbia Delegate Act, primary elections of each political party for the office of Delegate to the House of Representatives shall be held on the first Tuesday in May of each even-numbered year; and general elections for such office shall be held on the Tuesday next after the first Monday in November of each even-numbered year.

(4) Runoff elections shall be held whenever (A) in any primary election of a political party for candidates for the office of Delegate, no one candidate receives at least 40 per centum of the total votes cast in that election for all candidates of that party for that office, and (B) in any general election for the office of Delegate, no one candidate receives at least 40 per centum of the total votes cast in that election for all candidates for that office. Any such runoff election shall be held not less than two weeks nor

more than six weeks after the date on which the Board has determined the results of the preceding primary or general election, as the case may be. At the time of announcing any such determination, the Board shall establish and announce the date on which the runoff election will be held, if one is required. The candidates in any such runoff election shall be the two persons who received, respectively, the two highest numbers of votes in such preceding primary or general election; except that if any person withdraws his candidacy from such runoff election (under the rules and within the time limits prescribed by the Board), the person who received the next highest number of votes in such preceding primary or general election and who is not already a candidate in the runoff election shall automatically become such a candidate.

(5) With respect to special elections required or authorized by this chapter, the Board may establish the dates on which such special elections are to be held and prescribe such other terms and conditions as may in the Board's opinion be necessary or appropriate for the conduct of such elections in a manner comparable to that prescribed for other elections held pursuant to this chapter.

(6) The first general election for members of the Board of Education shall be held on November 5, 1968, and thereafter on the Tuesday next after the first Monday in November of each odd-numbered calendar year.

(7)(A) If in a general election for members of the Board of Education no candidate for the office of member from a ward, or no candidate for the office of member elected at large (where only one at-large position is being filled at such election), receives a majority of the votes validly cast for such office, a runoff election shall be held on the twenty-first day next following such election. The candidate receiving the highest number of votes in such runoff election shall be declared elected.

(B) When more than one office of member elected at large is being filled at such a general election, the candidates for such offices who receive the highest number of votes shall be declared elected, except that no candidate shall be declared elected who does not receive a majority of the number of all votes cast for candidates for election at large in such election divided by the number of at-large offices to be filled in such election. Where one or more of the at-large positions remains unfilled, a runoff election shall be held as provided in subparagraph (A) of this paragraph, and the candidate or candidates receiving the highest number of votes in such runoff election shall be declared elected.

(C) Where a vacancy in an unexpired term for an at-large position is being filled at the same general election as one or more full term at-large positions, the successful candidate or candidates with the highest number of votes in the general election, or in the runoff election if a runoff election is necessary, shall be declared elected to the full term position or positions, provided that any candidate declared elected at the general election shall for this purpose be deemed to have received a higher number of votes than any candidate elected in the runoff election.

(D) The Board may resolve any tie vote occurring in an election governed by this paragraph by requiring the candidates receiving the tie vote to cast lots at such time and in such manner as the Board may prescribe.

(8) In the case of a runoff election for the office of member of the Board of Education elected at large, the candidates in such runoff election shall be those unsuccessful candidates, in number not more than one more than the number of such offices to be filled, who in the general election next preceding such runoff election received the highest number of votes less than a majority. In the case of a runoff election for the office of member of the Board of Education from a ward, the runoff election shall be held in such ward, and the two candidates who in the general election next preceding such runoff election received respectively the highest number and the second highest number of votes validly cast in such ward or who tied in receiving the highest number of such votes shall run in such runoff election. If in any case (other than the one described in the preceding sentence) a tie vote must be resolved to determine the candidates to run in any runoff election, the Board may resolve such tie vote by requiring the candidates receiving the tie vote to cast lots at such time and in such manner as the Board may prescribe.

(9) If any candidate withdraws (in accordance with such rules and time limits as the Board shall prescribe) from a runoff election held to select a member of the Board of Education or dies before the date of such election, the candidate who received the same number of votes in the general election next preceding such runoff election as a candidate in such runoff election or who received a number of votes in such general election which is next highest to the number of votes in such general election received by a candidate in the runoff election and who is not a candidate in such runoff election shall be a candidate in such runoff election. The resolution of any tie necessary to determine the candidate to fill the vacancy caused by such withdrawal or death shall be resolved by the Board in the same manner as ties are resolved under paragraph (8).

(b) All elections prescribed by this chapter shall be conducted by the Board in conformity with the provisions of this chapter. In all elections held pursuant to this chaper the polls shall be open from 8 o'clock antemeridian to 8 o'clock postmeridian. Candidates receiving the highest number of votes in elections held pursuant to this chapter, other than general elections for the office of Delegate and for members of the Board of Education, shall be declared the winners;

(c) In the case of a tie vote, the resolution of which will affect the outcome of any election other than an election for members of the Board of Education, the candidates receiving the tie vote shall cast lots before the Board, at 12 o'clock noon on a date to be set by the Board, but not sooner than ten days following determination by the Board of the results of the election which require the resolution of such tie, and the one to whom the lot shall fall shall be declared the winner. If any candidate or candidates, receiving a tie vote, fail to appear before 12 o'clock

noon on said day, the Board shall cast lots for him or them. For the purpose of casting lots any candidate may appear in person, or by proxy appointed in writing.

(d) In the event that any official, other than a Delegate or a winner of a primary election for the office of Delegate or a member of the Board of Education, elected pursuant to this chapter dies, resigns, or becomes unable to serve during his or her term of office leaving no person elected pursuant to this chapter to serve the remainder of the unexpired term of office, the successor or successors to serve the remainder of such term shall be chosen pursuant to the rules of the duly authorized party committee: *Provided,* That such successor shall have the qualifications required by this chapter for such office. In the event that such a vacancy occurs in the office of a candidate for the office of Delegate who has been declared the winner in the preceding primary or party runoff election for such office, the vacancy may be filled not later than fifteen days prior to the next general election for such office, by nomination by the party committee of the party which nominated his predecessor, and by paying the filing fee required by section 1–1108(i). In the event that such a vacancy occurs in the office of Delegate more than twelve months before the expiration of its term of office, the Board shall call special elections to fill such vacancy for the remainder of its term of office.

(e) Whenever a vacancy occurs in the office of member of the Board of Education, such vacancy shall be filled at the next general election for members of the Board of Education which occurs more than ninety-nine days after such vacancy occurs. However, the Board of Education shall appoint a person to fill such vacancy until the unexpired term of the vacant office ends or until the fourth Monday in January next following the date of the election of a person to serve the remainder of such unexpired term, whichever occurs first. A person elected to fill a vacancy shall hold office for the duration of the unexpired term of office to which he was elected. Any person appointed under this subsection shall have the same qualifications for holding such office as were required of his immediate predecessor. (Aug. 12, 1955, 69 Stat. 702, ch. 862, § 10; Oct. 4, 1961, 75 Stat. 819, Pub. L. 87–389, § 1(18, 19, 20); Apr. 22, 1968, Pub. L. 90–292, § 4(7), 82 Stat. 105; Sept. 22, 1970, Pub. L. 91–405, title II, §§ 203(c), 205(e)(2), 84 Stat. 850, 854.)

AMENDMENTS

1970—Subsec. (a)(1). Section 205(e)(2) of act Sept. 22, 1970, Pub. L. 91–405, amended subsec. (a)(1) by striking out "clauses (1), (2), and (3)" and "clause (4)" and inserting in lieu thereof "clauses (1) and (2)" and "clause (3)", respectively.

Subsec. (a)(3)–(9). Section 203(c)(1) of such act amended subsec. (a) by redesignating pars. (3)–(6) as pars. (6)–(9) and inserted new pars. (3)–(5) to read as above set out.

Subsec. (a)(9). Section 203(c)(2) of such act amended subsec. (a)(9) by striking out "(5)" and inserting in lieu thereof "(8)".

Subsec. (b). Section 203(c)(3) of such act amended subsec. (b) by inserting "the office of Delegate and for" after "general elections for".

Subsec. (c). Section 203(c)(4) of such act amended subsec. (c) by striking out "a tie vote in" and inserting in lieu thereof "a tie vote, the resolution of which will affect the outcome of"; and by striking out "ten days following the election" and inserting in lieu thereof "ten days following determination by the Board of the results of the election which require the resolution of such tie".

Subsec. (d). Section 203(c)(5) of such act amended subsec. (d) by inserting "a Delegate or a winner of a primary election for the officer of Delegate or" after "any official, other than"; and by adding at the end two new sentences to read as above set out.

1968—Section 4(7), act Apr. 22, 1968, Pub. L. 90–292, amended section as follows:

(1) struck out the second and third sentences of paragraph (1) of subsection (a) and the second sentence of paragraph (2) thereof;

(2) added at the end of subsection (a) paragraphs (3), (4), (5), and (6);

(3) subsection (b) was amended to read as above set out; see main edition for provisions of subsection (b) before this amendment;

(4) inserted after "In the case of a tie" in subsection (c) "vote in any election other than an election for members of the Board of Education,";

(5) inserted after "official" in subsection (d), "other than a member of the Board of Education,"; and

(6) added at the end and thereof subsection (e).

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment of section by Pub. L. 91–405, effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as a note to sec. 1–1101.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note under § 1–1101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1–1108, 31–101.

§ 1–1111. Petition for recount by candidate—Procedure—Expenses—Petition for recount by voter to District of Columbia Court of Appeals—Grounds for voiding election.

(a) * * *

(b) Within seven days after the Board certifies the results of an election, any person who voted in the election may petition the District of Columbia Court of Appeals to review such election. In response to such a petition, the court may set aside the results so certified and declare the true results of the election, or void the election in whole or in part. To determine the true results of an election the court may order a recount or take other appropriate action, whether or not a recount has been conducted or requested pursuant to subsection (a). The court shall void an election only for fraud, mistake, the making of expenditures by a candidate in violation of this chapter, or other defect, serious enough to vitiate the election as a fair expression of the will of the registered qualified electors voting therein. If the court voids an election it may order a special election, which shall be conducted in such manner (comparable to that prescribed for regular elections), and at such time, as the Board shall prescribe. The decision of such court shall be final and not appealable. (Aug. 12, 1955, 69 Stat. 703, ch. 862, § 11; Apr. 22, 1968, Pub. L. 90–292, § 4(8), 82 Stat. 106.)

AMENDMENT

1968—Section 4(8), act Apr. 22, 1968, Pub. L. 90–292, amended subsection (b) by striking out "the United States District Court for the District of Columbia" and inserted in lieu thereof "the District of Columbia Court of Appeals".

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note under § 1–1101.

NOTES TO DECISIONS

Absentee ballots

It was error for the board to refuse to count absentee ballots which were postmarked after election day which fell on November 4, inasmuch as absentee ballots were not mailed by the board of elections until November 2 together with instructions to voters that ballots must be returned by November 10 but without mention of requirement that ballots be postmarked on election day. *T. F. Curtis* v. *J. E. Bindeman, et. al., and C. I. Cassell* (D.C. App. 1970, 261 A. 2d 515).

Construction

Section 1–1109 provision that vote shall be valid only if cast in voting precinct where residence shown on voter's registration is located should be liberally construed so as not to deny innocent voters their right to vote, or to upset an election for technical reasons. *T. F. Curtis* v. *J. E. Bindeman, et al., and C. I. Cassell* (D.C. App. 1970, 261 A. 2d 515).

The court held that it was not error to count ballots which were marked in voting precincts other than precincts in which voters resided where ballots were assigned to and counted by board as if they had actually been marked and deposited in voters' precinct and there were no instances of double voting. *Id.*

§ 1–1112. Interference with registration and voting.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1–1114.

§ 1–1113. Appropriations—Maximum expenditures by candidate—Maximum contributions receivable by Committee—Maximum contributions to campaign—Statement of election expenses.

* * * * *

(b) Subject to the penalties provided in this chapter, a candidate for elector of President and Vice President, Delegate, national committeeman, national committeewoman, or delegate, in his campaign for election, shall not make expenditures in excess of $2,500.

* * * * *

(d) No person shall, directly or indirectly, make contributions in an aggregate amount in excess of $5,000 in connection with any campaign for election of any elector, Delegate, national committeeman, national committeewoman, or delegate.

(e) Every candidate and independent committee or party committee shall, within thirty days after an election, file with the Board of Elections an itemized statement, subscribed and sworn to by the candidate or committee treasurer, as the case may be, setting forth all moneys received and expended in connection with said election, the names of persons from whom received and to whom paid, and the purpose for which it was expended. Such statement shall set forth any unpaid debts and obligations incurred by the candidate or independent committee or party committee with regard to such election, and specify the balance, if any, of such election funds remaining in his or their hands. (As amended Sept. 22, 1970, Pub. L. 91–405, title II, § 205(j), (m), (n), 84 Stat. 854, 855.)

AMENDMENTS

1970—Subsec. (b). Section 205(m) of act Sept. 22, 1970, Pub. L. 91–405, amended subsec. (b) by inserting "Delegate," after "Vice President,"; by inserting "or" after "committeewoman,"; and by striking out ", or alternate".

Subsec. (d). Section 205(n) of such act amended subsec. (d) by inserting "Delegate," after "elector,"; by inserting "or" after "committeewoman,"; and by striking out ", or alternate".

Subsec. (e). Section 205(j) of such act amended subsec. (e) by striking out "ten days" and inserting "thirty days" in lieu thereof.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment of section by Pub. L. 91–405, effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as a note to sec. 1–1101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1–1114.

§ 1–1114. False registration, fraud, and other corrupt practices in elections—Penalties.

Any person who shall register, or attempt to register, under the provisions of this chapter and make any false representations as to his qualifications for voting or for holding elective office, or be guilty of violating section 1–1109, 1–1112, or 1–1113, or be guilty of bribery or intimidation of any voter at the elections herein provided for, or, being registered, shall vote or attempt to vote more than once in any election so held, or shall purloin or secrete any of the votes cast in such elections, or attempt to vote in an election held by a political party other than that to which he has declared himself to be affiliated, or, if employed in the counting of votes in any election held pursuant to this chapter knowingly, make a false report in regard thereto, and every candidate, person, or official of any political committee who shall knowingly make any expenditure or contribution in violation of this chapter, shall upon conviction thereof be fined not more than $500 or be imprisoned not more than ninety days, or both. The provisions of this section shall be supplemental to and not in derogation of any penalties under other laws of the District of Columbia. (Aug. 12, 1955, 69 Stat. 704, ch. 862, § 14; Oct. 4, 1961, 75 Stat. 820, Pub. L. 87–389, § 1(24); Sept. 22, 1970, Pub. L. 91–405, title II, § 205(k), 84 Stat. 854.)

AMENDMENTS

1970—Section 205(k) of act Sept. 22, 1970, Pub. L. 91–405, amended the first sentence by striking out "his place of residence or his voting privilege in any other part of the United States" and inserting in lieu thereof "his qualifications for voting or for holding elective office, or be guilty of violating section 1–1109, 1–1112, or 1–1113".

1961—Section 1(24), act Oct. 4, 1961, amended the section by striking from the first sentence "if employed in the counting of votes in such elections" and inserting in lieu thereof "if employed in the counting of votes in any election held pursuant to this chapter knowingly" and by inserting the word "knowingly" before the words "make any expenditure".

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment of section by Pub. L. 91–405, effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as a note to sec. 1–1101.

§ 1–1115. Candidacy for more than one office not permitted—Choice of nominations—Withdrawal from multiple nominations.

No person shall be a candidate for more than one office on the Board of Education in any election for members of the Board of Education. If a person is nominated for more than one such office, he shall, within three days after the Board has sent him notice that he has been so nominated, designate in writing the office for which he wishes to run, in which case he will be deemed to have withdrawn all other nominations. In the event that such person fails within

such three-day period to file such a designation with the Board, all such nominations of such person shall be deemed withdrawn. (Aug. 12, 1955, ch. 862, § 15; as added Apr. 22, 1968, Pub. L. 90–292, § 4(9), 82 Stat. 106.)

AMENDMENT

1968—Section 4(9), act Apr. 22, 1968, Pub. L. 90–292, added this section and section 16 which is set out as a note to section 1–1101.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note under § 1–1101.

Chapter 12.—PRESIDENTIAL INAUGURAL CEREMONIES

Sec.
1–1202. Regulations—Special registration tags for certain motor vehicles.
1–1211. "Commissioners" deemed to refer to Commissioner of the District of Columbia.

§ 1–1201. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–1202. Regulations—Special registration tags for certain motor vehicles.

(a) For each inaugural period the District of Columbia Council is authorized and directed to make all reasonable regulations necessary to secure the preservation of public order and protection of life, health, and property; to make special regulations respecting the standing, movement, and operation of vehicles of whatever character or kind during such period; and to grant, under such conditions as it may impose, special licenses to peddlers and vendors for the privilege of selling goods, wares, and merchandise in such places in the District of Columbia, and to charge such fees for such privilege, as it may deem proper.

(b) The Commissioner of the District of Columbia is authorized to issue, for both duly registered motor vehicles and unregistered motor vehicles made available for the use of the Inaugural Committee, special registration tags, valid for a period not exceeding ninety days, designed to celebrate the occasion of the inauguration of the President and Vice President. (Aug. 6, 1956, 70 Stat. 1049, ch. 974, § 2; Jan. 30, 1968, Pub. L. 90–251, § 1, 82 Stat. 4.)

AMENDMENTS

1968—Section 1, act Jan. 30, 1968, Pub. L. 90–251, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(33) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

§ 1–1203. Appropriations—Expenses for which same may be used.

There are hereby authorized to be appropriated such sums as may be necessary, payable in like manner as other appropriations for the expenses of the District of Columbia, to enable the Commissioners to provide additional municipal services in said District during the inaugural period, including employment of personal services without regard to the civil-service and classification laws; travel expenses of enforcement personnel, including sanitarians, from other jurisdictions; hire of means of transportation; meals for policemen, firemen and other municipal employees, cost of removing and relocating streetcar loading platforms, construction, rent, maintenance, and expenses, incident to the operation of temporary public comfort stations, first-aid stations, and information booths; and other incidental expenses in the discretion of the Commissioners; and such sums as may be necessary, payable in like manner as other appropriations for the expenses of the Department of the Interior, to enable the Secretary of the Interior to provide meals for the members of the United States Park Police during the inaugural period. (Aug. 6, 1956, 70 Stat. 1049, ch. 974, § 3; Jan. 30, 1968, Pub. L. 90–251, § 2, 82 Stat. 4.)

AMENDMENTS

1968—Section 2, act Jan. 30, 1968, Pub. L. 90–251, amended section by:

(a) Striking "travel expenses of enforcement personnel from other jurisdictions" and inserting in lieu thereof "travel expenses of enforcement personnel, including sanitarians, from other jurisdictions";

(b) Striking "policemen and firemen" and inserting in lieu thereof "policemen, firemen and other municipal employees"; and

(c) Striking the period at the end of the section and inserting the matter beginning with "; and such sums" and ending with "inaugural period."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–1204. Permits for use of grounds and reservations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–1205. Installation of electrical facilities.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–1207. Permission for installation of communication facilities—When to be removed.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–1208. Regulations and licenses to be in force only during inaugural period—Publication of regulations—Penalties for violations.

The regulations and licenses authorized by this chapter shall be in full force and effect only during the inaugural period. Such regulations shall be published in one or more of the daily newspapers published in the District of Columbia and no penalty prescribed for the violation of any such regulation shall be enforced until five days after such publication. Any person violating any regulation promulgated by the District of Columbia Council under the authority of this chapter shall be fined not

more than $100 or imprisoned not more than thirty days. Each and every day a violation of such regulation exists shall constitute a separate offense, and the penalty prescribed shall be applicable to each such separate offense. (Aug. 6, 1956, 70 Stat. 1051, ch. 974, § 8; Jan. 30, 1968, Pub. L. 90–251, § 3, 82 Stat. 4.)

AMENDMENT

1968—Section 3, act Jan. 30, 1968, Pub. L. 90–251, amended section by striking out "Commissioners" and inserting in lieu thereof "District of Columbia Council".

§ 1–1211. "Commissioners" deemed to refer to Commissioner of the District of Columbia.

Whenever the term "Commissioners" is used in this chapter, such term will be deemed to refer to the Commissioner of the District of Columbia. (Aug. 6, 1956, ch. 974, § 10, as added Jan. 30, 1968, Pub. L. 90–251, § 4, 82 Stat. 4.)

Chapter 13.—WASHINGTON METROPOLITAN REGION DEVELOPMENT

§ 1–1302. Policy—Exercise of functions of all governmental authorities to be coordinated.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–1304. All agencies of federal, district and regional governments are invited to make intensive study of final report of Joint Committee on Washington Metropolitan Problems.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 14.—NATIONAL CAPITAL REGION TRANSPORTATION

SUBCHAPTER V.—ADOPTED REGIONAL SYSTEM

Sec.
1–1441. Definitions.
1–1442. Authorization of Federal contributions.
1–1443. Authorization of District of Columbia contributions.
1–1444. Construction approvals.
1–1445. Repayment from excess revenues.

SUBCHAPTER I.—NATIONAL CAPITAL TRANSPORTATION PROGRAM

PART I.—SHORT TITLE, STATEMENT OF FINDINGS AND POLICY, AND DEFINITIONS

§ 1–1401. Repealed. Dec. 9, 1969, Pub. L. 91–143, § 8(a)(1), 83 Stat. 322.

The above section is a part of the act of July 14, 1960, Pub. L. 86–669, 74 Stat. 537, which was classified to sections 1–1401 to 1–1409, and as a note to section 1–1401.

Section 1–1401 consisted of a statement of findings and policy.

§ 1–1401a. Agreements with Maryland and Virginia to develop continuing comprehensive transportation planning process.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–1402. Repealed. Dec. 9, 1969, Pub. L. 91–143, § 8(a)(1), 83 Stat. 322.

The above section is a part of the act of July 14, 1960, Pub. L. 86–669, 74 Stat. 537, which was classified to sections 1–1401 to 1–1409, and as a note to section 1–1401.

Section 1–1402 consisted of definitions.

PART II.—CREATION OF NATIONAL CAPITAL TRANSPORTATION AGENCY

§ 1–1403. Repealed. Dec. 9, 1969, Pub. L. 91–143, § 8(a)(1), 83 Stat. 322.

The above section is a part of the act of July 14, 1960, Pub. L. 86–669, 74 Stat. 537, which was classified to sections 1–1401 to 1–1409, and as a note to section 1–1401.

Section 1–1403 established the National Capital Transportation Agency.

§ 1–1404. Repealed. Nov. 6, 1966, 80 Stat. 1353, Pub. L. 89–774, § 5(b).

§§ 1–1405 to 1–1407. Repealed. Dec. 9, 1969, Pub. L. 91–143, § 8(a)(1), 83 Stat. 322.

The above sections are a part of the act of July 14, 1960, Pub. L. 86–669, 74 Stat. 537, which was classified to sections 1–1401 to 1–1409, and as a note to section 1–1401.

Section 1–1405 authorized the Administrator to establish advisory and coordinating committees.

Section 1–1406 directed the agency to prepare for approval a Transit Development Program.

Section 1–1407 outlined the functions and duties of the agency.

PART III.—AUTHORIZATION FOR NEGOTIATIONS OF INTERSTATE COMPACT

§§ 1–1408, 1–1409. Repealed. Dec. 9, 1969, Pub. L. 91–143, § 8(a)(1), 83 Stat. 322.

The above sections are a part of the act of July 14, 1960, Pub. L. 86–669, 74 Stat. 537, which was classified to sections 1–1401 to 1–1409, and as a note to section 1–1401.

Section 1–1408 authorized the negotiation of compact between Virginia, Maryland, and the District of Columbia

Section 1–1409 contained separability provisions.

SUBCHAPTER II.—COMPACT FOR MASS TRANSPORTATION

§ 1–1410. Consent of Congress given for Virginia, Maryland and District of Columbia to enter into compact for regulation of mass transportation in Washington metropolitan area.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Abuse of discretion

Commission's refusal to consider a motion for reconsideration of decision of Washington Metropolitan Area Transit Commission as being timely, where it was filed on 30th day after issuance of the order increasing fares charged by bus company, although objector's agent arrived several minutes after closing time of Commission's offices and slid the motion under the door where it was seen later by executive director of Commission, was an abuse of discretion. *J. Yohalem* v. *Washington Metropolitan Area Transit Commission, et ano.* (1969, 412 F. 2d 1124, 134 U.S. App. D.C. 77).

Considerations in making fare adjustments

The court concluded on the issue of fare adjustments, that the Transit Commission is required to consider not only the justness and reasonableness of fares charged or proposed to be charged by the carrier, in the sense of meeting overall revenue requirements, but also whether such fares are "unduly preferential or unduly discriminatory either between riders or sections of the

Metropolitan District." *T. E. Payne etc., et al.* v. *Washington Metropolitan Area Transit Commission, D.C. Transit System Inc., etc.* (1968, 415 F. 2d 901, 134 U.S. App. D.C. 321).

Construction

The District of Columbia Minimum Wage Act [§ 36–401 et seq.] was intended to cover wages and hours of individuals working in transportation field solely within the District of Columbia, but does not apply to bus drivers who were engaged in interstate commerce, spending on the average 37.6 percent of working time in the District. *K. C. Williams et al.* v. *W. M. A. Transit Company* (D.C. App. 1970, 268 A. 2d 261).

Estoppel

Since the petitioning bus companies made manifest, before closing of hearings, their position that no approval of Transit Commission was required for their proposed through route service, they were not estopped on their application for reconsideration from making such argument. *D.C. Transit System, Inc. et ano* v. *Washington Metropolitan Area Transit Commission* (1970, 429 F. 2d 197, — U.S. App. D.C. —).

Evidence—Sufficiency

In prosecution for wilfully, as a carrier, engaging in transportation for hire of persons by motor vehicle without first obtaining certificate of public convenience and necessity the conflicting evidence presented a question of fact for determination by the trial judge and supported finding that arrangement between defendants and licensed carrier constituted a lease, not a charter. *Holiday Tours, Inc., et ano.* v. *District of Columbia* (D.C. App. 1967, 234 A. 2d 179).

Evidence supported finding that arrangement, whereby defendants leased one of their own buses to a licensed carrier and carrier, without taking physical possession of bus, chartered it back to defendants, was a subterfuge, rather than a bona fide charter. *Id.*

Findings of Commission

The court held that the findings of Washington Metropolitan Area Transit Commission are conclusive if supported by substantial evidence, and it is not a valid objection that conflicts in the evidence might conceivably have been resolved differently, or other inferences drawn from the same record. *T. E. Payne etc., et al.* v. *Washington Metropolitan Area Transit Commission, D.C. Transit System Inc., etc.* (1968, 415 F. 2d 901, 134 U.S. App. D.C. 321).

The Court of Appeals held that it must sustain findings of Transit Commission when they materialize as rational deductions grounded on substantial evidence in the record considered as a whole. *R. A. Williams et ano.* v. *Washington Metropolitan Area Transit Commission, D.C. Transit System Inc., Democratic Central Committee, etc., et al.* (1968, 415 F. 2d 922, 134 U.S. App. D.C. 342, cert. denied 89 S. Ct. 860).

Grandfather rights

Grandfather rights in Washington Metropolitan Area Transit Regulation Compact, expressly contemplated the issuance of certificates, without new or further proof of public convenience and necessity, to those "bona fide engaged in transportation" on the effective date of the statute. *D.C. Transit System, Inc.* v. *Washington Metropolitan Area Transit Commission, et ano.* (1967, 376 F. 2d 765, 126 U.S. App. D.C. 210).

Transit operator existing prior to Washington Metropolitan Area Transit Regulation Compact was given no exclusive and permanent monopolies, and commission could, with due observance of requirements of statute and upon proper findings, grant certificate authority competitive with that held by prior existing certificate holder. *Id.*

Interim rate increase

There is little doubt that the Washington Metropolitan Area Transit Commission has general authority to issue interim orders although the evidence introduced does not enable the tribunal to dispose of the issues completely or permanently, and under the compact the Commission has authority to modify existing rates upon making a finding that existing rates are unjust and unreasonable. *T. E. Payne etc., et al.* v. *Washington Metropolitan Area Transit Commission, D.C. Transit System Inc., etc.* (1968, 415 F. 2d 901, 134 U.S. App. D.C. 321).

The court held that in making an interim rate increase the Washington Metropolitan Area Transit Commission was not required to make the full and complete findings as to margin of return and fare structure that must accompany an exercise of its authority to prescribe permanent rates, but its discretion must be exercised rationally, and it may not act without making relevant findings, supported by the record, to sustain its action. *Id.*

The court held further that given the inadequacy of the record and the need for further inquiry, the danger of serious consequences to transit company and the public if no fare increase were granted in the interim, and the undesirability of imposing unreasonably high fares on the public, the ordering of an interim rate increase by Washington Metropolitan Area Transit Commission was within the bounds of its authority and was supported by the findings it made. *Id.*

Limited suspension of proposed tariffs

In this case the court concluded that the action of Washington Metropolitan Area Transit Commission in suspending transit company's proposed tariffs for a total period of 150 days from the date of filing was lawful, the issue being governed by the suspension provisions of the Compact and not by those contained in transit company's franchise. *T. E. Payne etc., et al.* v. *Washington Metropolitan Area Transit Commission, D.C. Transit System Inc., etc.* (1968, 415 F. 2d 901, 134 U.S. App. D.C. 321).

Public convenience and necessity

Under Washington Metropolitan Area Transit regulation Compact declaring any carrier's right to establish through routes and joint fares with other carriers and, whenever required by public convenience and necessity, investing Transit Commission with power to direct establishment of through route service upon complaint or upon its own initiative, the public convenience and necessity standard is a limitation on Commission's, as distinct from carriers', power to initiative through route service. *D.C. Transit System, Inc. et ano* v. *Washington Metropolitan Area Transit Commission* (1970, 429 F. 2d 197, — U.S. App. D.C. —).

Under the Compact, certificate of public convenience and necessity is necessary for underlying services sought to be availed of to create a through route service by two bus companies, and if the Transit Commission has reason to doubt adequacy of underlying certificate authority to support through route service, it can suspend joint tariff and initiate an investigation of that adequacy. *Id.*

Under Washington Metropolitan Area Transit Regulation Compact, commission could not extend routes, in District, of carriers which had, prior to compact, received authority from joint board to traverse certain streets to terminal points, in a manner competitively adverse to holder of certificate issued prior to compact without taking into account the limiting statutory conditions which involved a concept of public convenience and necessity far beyond that of carriers' passengers. *D.C. Transit System, Inc.* v. *Washington Metropolitan Area Transit Commission, et ano.* (1967, 376 F. 2d 765, 126 U.S. App. D.C. 210).

Under Washington Metropolitan Area Transit Regulation Compact, convenience of passengers was not, under regulatory scheme, sole criterion for extension of routes in a manner competitively adverse to holder of certificate granted prior to compact. *Id.*

Retroactive rates

The court held that the Commission possesses no authority to fix rates for the past; an order prescribing lawful fares to be charged by public utility, being essentially legislative in character, ordinarily speaks only for the future. *R. A. Williams, et ano.* v. *Washington Metropolitan Area Transit Commission, D.C. Transit System Inc., Democratic Central Committee etc., et al.* (1968, 415 F. 2d 922, 134 U.S. App. D.C. 342, cert. denied 89 S. Ct. 860).

Sufficiency of record

Since the Court of Appeals was unable to determine from the record whether through route and joint fare

sightseeing operations in Washington Metropolitan Area contemplated by petitioning bus companies constituted permissible through route service, orders of the Transit Commission denying authority must be set aside and case remanded to Commission. *D.C. Transit System, Inc. et ano.* v. *Washington Metropolitan Area Transit Commission* (1970, 429 F. 2d 197, — U.S. App. D.C. —).

Through routes and joint fares

Under Washington Metropolitan Area Transit Regulation Compact allowing Transit Commission to establish reasonable division of joint fares among interconnecting carriers whenever it finds proposed or existing division to be unreasonable, the Transit Commission has power to prevent any undue subsidization of one carrier by carrier with which it is establishing a through route service. *D.C. Transit System, Inc. et ano.* v. *Washington Metropolitan Area Transit Commission* (1970, 429 F. 2d 197, — U.S. App. D.C. —).

Transit Commission may, in appropriate cases, compel one party to an existing through route service to establish additional through route agreements with other carriers, if that is their only means of developing competing through route services. *Id.*

Under the Compact, independently authorized transportation services may be joined so that a more convenient service can be provided passengers who would otherwise have to buy several tickets and devise their own interconnections and so that a more efficient cost structure can be available to carriers that would otherwise have to duplicate cost items, but a through route service can never be a cover for operations which in fact exceed the individual certificate authorities of one or both carriers. *Id.*

§ 1–1410a. Consent of Congress given to make certain amendments to mass transportation compact.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–1411. Commissioners authorized and directed to enter into compact and carry out terms thereof—Appropriations authorized for District of Columbia—Commissioners may not adopt amendment to compact without prior approval of Congress.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–1412. Suspension of certain laws for duration of compact—Reinstatement of laws upon termination of compact—Certain police powers of parties to compact and Directors of National Park Service not affected—Franchise rights and obligations of D.C. Transit System, Inc., not impaired—"Public Interest" includes interest of carrier employees—Laws relating to carrier employee benefits, wages, hours and working conditions, collective bargaining rights, rights to self organization continue in force—Jurisdiction of Public Service Commission and Interstate Commerce Commission transferred to Washington Metropolitan Area Transit Commission.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Construction

The District of Columbia Minimum Wage Act [§ 36–401 et seq.] was intended to cover wages and hours of individuals working in transportation field solely within the District of Columbia, but does not apply to bus drivers who were engaged in interstate commerce, spending on the average 37.6 percent of working time in the District. *K. C. Williams et al.* v. *W. M. A. Transit Company* (D.C. App. 1970, 268 A. 2d 261).

§ 1–1416. Reservation of right to alter, amend or repeal—Submission of periodic report to Congress—Disclosure of information—Access to books and records.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SUBCHAPTER III.—RAIL RAPID TRANSIT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in sections 1–1442, 9–220.

§ 1–1421. Statement of findings and purpose.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§§ 1–1422, 1–1423. Repealed. Dec. 9, 1969, Pub. L. 91–143, § 8(a)(2), 83 Stat. 323.

These sections are sections 3 and 4 of the act of Sept. 8, 1965, Pub. L. 89–173, 79 Stat. 664–665, as amended by Pub. L. 90–220, section 1. Section 1–1422 outlines the actions the agency was authorized to take in connection with the rapid rail transit system and section 1–1423 authorized the former commissioners to provide relocation assistance to those who were displaced as a result of the acts of the agency. See § 5–732a.

§ 1–1424. Appropriations authorized.

The cost of designing, engineering, constructing, and equipping the facilities of the Adopted Regional System (as defined in section 1–1441(1)) shall be financed in part by the Federal and District of Columbia Governments, as follows:

(1) To finance the United States portion there is hereby authorized to be appropriated to the Agency not to exceed $100,000,000, which shall remain available until expended;

(2) To finance the District of Columbia portion there is hereby authorized to be appropriated to the Agency out of the general fund of the District of Columbia not to exceed $50,000,000, which shall remain available until expended.

(Sept. 8, 1965, 79 Stat. 665, Pub. L. 89–173, § 5(a); Dec. 9, 1969, Pub. L. 91–143, § 8(b), 83 Stat. 323.)

CODIFICATION

Subsection (b) of sec. 5 of Pub. L. 89–173 is classified to section 9–220.

AMENDMENTS

1969—Section 8(b), act Dec. 9, 1969, Pub. L. 91–143 amended the introductory part of the section by striking out "authorized in section 3 (1–1422) hereof" and inserting in lieu thereof, "of the Adopted Regional System (as defined in section 2(1) (1–1441(1)) of the National Capital Transportation Act of 1969".

CROSS REFERENCES

Authority of appropriations to Department of Housing and Urban Development, and to District of Columbia, for payment to Washington Metropolitan Area Transit Authority, of any unappropriated portions of authorizations specified in pars. (1) and (2) of this section, see § 1–1433(b).

Loans for carrying out purposes of this subchapter, see § 9–220(b).

Relocation payments and assistance to persons displaced by programs and projects of Washington Metropolitan Area Transit Authority, see § 5–732a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1–1442, 1–1443.

SUBCHAPTER IV.—WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY COMPACT

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 1–1441.

§ 1–1431. Consent of Congress given for, and adoption of, compact amending compact set out under section 1–1410.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(425) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, with respect to appointing two directors as specified in section 5(a) of the compact set out as a note to this section. The appointments to be made from a group of individuals, as specified in par. 425 of the Plan, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to this title.

CROSS REFERENCE

Relocation payments and assistance to persons displaced by programs and projects of Washington Metropolitan Area Transit Authority, see § 5–732a.

§ 1–1432. Authority and duty of Commissioners to execute and carry out compact.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 1–1433. Transfer of function, property, documents, etc.—Appropriations—Development of Plans—Advisory services.

TRANSFER OF FUNCTIONS

Section 1(a)(3) of Reorg. Plan No. 2, of 1968, eff. June 30, 1968, transferred the functions of the Department of Housing and Urban Development, under subsection (b) of this section, to the Secretary of Transportation. For complete details of the Plan, see appendix to this title.

§ 1–1436. Reservation of right to alter, amend or repeal—Submission of reports to Congress—Disclosure of information—Access to books and records—Audits.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SUBCHAPTER V.—ADOPTED REGIONAL SYSTEM

§ 1–1441. Definitions.

For the purposes of this Act—

(1) The term "Adopted Regional System" means that system described in the Transit Authority's report entitled "Adopted Regional Rapid Rail Transit Plan and Program, March 1, 1968 (revised February 7, 1969)", as that system may hereafter be altered, revised, or amended in accordance with the Compact.

(2) The term "Compact" means the Washington Metropolitan Area Transit Authority Compact (Public Law 89-774; 80 Stat. 1324).

(3) The term "Transit Authority" means the Washington Metropolitan Area Transit Authority established under article III of the Compact.

(Dec. 9, 1969, Pub. L. 91–143, § 2, 83 Stat. 320.)

REFERENCES IN TEXT

This "Act" referred to in text is the act of Dec. 9, 1969, Pub. L. 91–143, enacting sections 1–1441 to 1–1445, the notes to section 1–1441, amending section 9–220(b)(3), repealing sections 1–1401 to 1–1409, 1–1422 and 1–1423 and amending section 1–1424. The "Compact" referred to in par. (2) is set out as a note to section 1–1431.

SHORT TITLE

Section 1, act Dec. 9, 1969, Pub. L. 91–143, provided: "This Act [Enacting sections 1–1441 to 1–1445, the notes to section 1–1441, amending section 9–220(b)(3), repealing sections 1–1401 to 1–1409, 1–1422 and 1–1423 and amending section 1–1424] may be cited as the 'National Capital Transportation Act of 1969'."

CROSS REFERENCE

Relocation payments and assistance to persons displaced by programs and projects of Washington Metropolitan Area Transit Authority, see § 5–732a.

STUDY OF DULLES AIRPORT EXTENSION

Section 7 of act Dec. 9, 1969, Pub. L. 91–143 provided: "The Secretary of Transportation is authorized to contract with the Transit Authority for a comprehensive study of the feasibility, including preliminary engineering, of extending a transit line in the median of the Dulles Airport Road from the vicinity of Virginia Route 7 on the I–66 Route of the Adopted Regional System to the Dulles International Airport.

"(b) The study to be undertaken pursuant to subsection (a) of this section shall be completed within six months after execution of the contract authorized therein at a cost not in excess of $150,000; and there is authorized to be appropriated not to exceed $150,000 to carry out the purposes of this section."

§ 1–1442. Authorization of Federal contributions.

(a) To provide the Federal share of the cost of the Adopted Regional System, which system supersedes that heretofore authorized by the Congress in the National Capital Transportation Act of 1965 (Public Law 89–173; 79 Stat. 663), the Secretary of Transportation is authorized to make annual contributions to the Transit Authority in amounts sufficient to finance in part the cost of the Adopted Regional System; except that the aggregate amount of Federal contributions for the Adopted Regional System, including the $100,000,000 authorized to be appropriated by section 1–1424(1), shall not exceed the lower amount of $1,147,044,000 or two-thirds of the net project cost of the Adopted Regional System.

(b) Federal contributions for the Adopted Regional System shall be subject to the following limitations and conditions:

(1) The work for which contributions are authorized shall be subject to the provisions of the Compact and shall be carried out substantially in accordance with the plans and schedules for the Adopted Regional System.

(2) The aggregate amount of such Federal contributions on or prior to the last day of any given fiscal year shall be matched by the local participating governments by payment of the local share of capital contributions required for the period ending with the last day of such year in a total amount not less than 50 per centum of the amount of such Federal contributions.

(c) There is authorized to be appropriated to the Secretary of Transportation, without fiscal year limitation, not to exceed $1,047,044,000 to carry out the purposes of this section. The appropriations authorized by this subsection shall be in addition to

the appropriations authorized by section 1–1424(1). (Dec. 5, 1969, Pub. L. 91–143, § 3, 83 Stat. 320.)

REFERENCES IN TEXT

The National Capital Transportation Act of 1965, Pub. L. 89–173, is classified to 1–1421 to 1–1426 and 9–220.

§ 1–1443. Authorization of District of Columbia contributions.

(a) To provide the District of Columbia share of the cost of the Adopted Regional System, the Commissioner of the District of Columbia is authorized to contract with the Transit Authority to make annual capital contributions aggregating not to exceed $216,500,000. To carry out the purposes of this section there is authorized to be appropriated out of the general fund of the District of Columbia, without fiscal year limitation, not to exceed $166,500,000.

(b) [This subsection is an amendment of section 9–220 (b) (3) and is set out therein.]

(c) The appropriations authorized by subsection (a) of this section shall be in addition to the appropriations authorized on behalf of the District of Columbia by section 1–1424(2).

(d) The Commissioner of the District of Columbia is further authorized to contract with the Transit Authority and to pay in accordance with the terms thereof for the service to be provided to the District of Columbia by the Adopted Regional System. (Dec. 9, 1969, Pub. L. 91–143, § 4, 83 Stat. 321.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9–220.

§ 1–1444. Construction approvals.

(a) No portion of the Adopted Regional System shall be constructed within the United States Capitol Grounds except upon approval of the Commission for Extension of the United States Capitol.

(b) Construction of the Adopted Regional System in, on, under, or over public space in the District of Columbia under the jurisdiction of the Commissioner of the District of Columbia shall, in the interest of public convenience and safety, be performed in accordance with schedules agreed upon between the Transit Authority and the Commissioner, to the end that such construction work will be coordinated with other construction work in such public space; and the Commissioner shall so exercise his jurisdiction and control over such public space as to facilitate the Transit Authority's use and occupation thereof for construction of the Adopted Regional System. (Dec. 9, 1969, Pub. L. 91–143, § 5, 83 Stat. 322.)

CROSS REFERENCE

Relocation payments and assistance to persons displaced by programs and projects of Washington Metropolitan Area Transit Authority, see § 5–732a.

§ 1–1445. Repayment from excess revenues.

To the extent that revenues or other receipts derived from or in connection with the ownership or operation of the Adopted Regional System (other than service payments under transit service agreements executed between the Transit Authority and local political subdivisions, the proceeds of bonds or other evidences of indebtedness issued by the Transit Authority, and capital contributions received by the Transit Authority) are excess to the amounts necessary to make all payments, including debt service, operating and maintenance expenses, and deposits in reserves required or permitted by the terms of any contract of the Transit Authority with or for the benefit of holders of its bonds, notes, or other evidences of indebtedness issued for any purpose relating to the Adopted Regional System, other than extensions thereof, two-thirds of such excess revenues shall, at the end of each fiscal year, beginning with the fiscal year in which the Adopted Regional System (exclusive of extensions) is first put into substantially full revenue service, be paid into the Treasury of the United States as miscellaneous receipts. (Dec. 9, 1969, Pub. L. 91–143, § 6, 83 Stat. 322.)

Chapter 15.—ADMINISTRATIVE PROCEDURE

Sec.
1–1501. Other authority.
1–1502. Definition.
1–1503. Establishment of general procedures.
1–1504. Official publication.
1–1505. Public notice and participation in rulemaking.
1–1506. Filing and publishing of rules.
1–1507. Compilation of rules.
1–1508. Declaratory orders.
1–1509. Contested cases.
1–1510. Judicial review.

§ 1–1501. Other authority.

This chapter shall supplement all other provisions of law establishing procedures to be observed by the Commissioner, the Council, and agencies of the District government in the application of laws administered by them, except that this chapter shall supersede any such law and procedure to the extent of any conflict therewith. (Oct. 21, 1968, Pub. L. 90–614, § 2, 82 Stat. 1204.)

EFFECTIVE DATE

Section 12, act Oct. 21, 1968, Pub. L. 90–614, provided: "This Act [this chapter] shall become effective one year after the date of its enactment. [Oct. 21, 1968.]"

SHORT TITLE

Section 1, act Oct. 21, 1968, Pub. L. 90–614, provided: "This Act [this chapter] may be cited as the 'District of Columbia Administrative Procedure Act' act".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–123, 2–129, 2–312, 2–406, 2–407, 2–708, 2–1809, 11–722, 11–1525, 29–417, 35–427, 35–1709, 36–130, 36–409, 40–302, 40–420, 45–1409, 47–2101.

NOTES TO DECISIONS

Applicability to Unemployment Compensation Proceedings

This chapter applies to proceedings under the Unemployment Compensation Act (§ 46–301 et seq.), and should be applied in posthearing procedure by the Unemployment Compensation Board in an unemployment compensation proceeding. *Woodridge Nursery School* v. *T. G. Jessup and District of Columbia Unemployment Compensation Board* (D.C. App. 1970, 269 A. 2d 199).

Construction

This chapter supersedes any law or procedure of the Commissioner, the Council, and the agencies of the District government, where they conflict with the provi-

sions of the chapter. *Woodridge Nursery School* v. *T. G. Jessup and District of Columbia Unemployment Compensation Board* (D.C. App. 1970, 269 A. 2d 199).

§ 1–1502. Definition.

As used in this chapter—

(1)(a) the term "Commissioner" means the Commissioner of the District of Columbia, or his designated agent;

(b) the term "Council" means the District of Columbia Council;

(2) the term "District" means the District of Columbia;

(3) the term "agency" includes both subordinate agency and independent agency;

(4) the term "subordinate agency" means any officer, employee, office, department, division, board, commission, or other agency of the government of the District, other than an independent agency or the Commissioner or the Council, required by law or by the Commissioner or the Council to administer any law or any rule adopted under the authority of a law;

(5) the term "independent agency" means any agency of the government of the District with respect to which the Commissioner and the Council are not authorized by law, other than this chapter, to establish administrative procedures, but does not include the several courts of the District and the District of Columbia Tax Court;

(6) the term "rule" means the whole or any part of any Commissioner's, Council's, or agency statement of general or particular applicability and future effect designed to implement, interpret, or prescribe law or policy or to describe the organization, procedure, or practice requirements of the Commissioner, Council, or of any agency;

(7) the term "rulemaking" means Commissioner's, Council's, or agency process for the formulation, amendment, or repeal of a rule;

(8) the term "contested case" means a proceeding before the Commissioner, the Council, or any agency in which the legal rights, duties, or privileges of specific parties are required by any law (other than this Chapter), or by constitutional right, to be determined after a hearing before the Commissioner or the Council or before an agency, but shall not include (A) any matter subject to a subsequent trial of the law and the facts de novo in any court; (B) the selection or tenure of an officer or employee of the District; (C) proceedings in which decisions rest solely on inspections, tests, or elections; and (D) cases in which the Commissioner, Council, or an agency act as an agent for a court of the District;

(9) the term "person" includes individuals, partnerships, corporations, associations, and public or private organizations of any character other than the Commissioner, the Council, or an agency;

(10) the term "party" includes the Commissioner, the Council, and any person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party, in any proceeding before the Commissioner, the Council, or an agency, but nothing herein shall be construed to prevent the Commissioner, the Council, or an agency from admitting the Commissioner, the Council, or any person or agency as a party for limited purposes;

(11) the term "order" means the whole or any part of the final disposition (whether affirmative, negative, injunctive, or declaratory in form) of the Commissioner or Council or of any agency in any matter other than rulemaking, but including licensing;

(12) the term "license" includes the whole or part of any permit, certificate, approval, registration, charter, membership, statutory exemption, or other form of permission granted by the Commissioner, the Council, or any agency;

(13) the term "licensing" includes process respecting the grant, renewal, denial, revocation, suspension, annulment, withdrawal, limitation, amendment, modification, or conditioning of a license by the Commissioner or the Council or an agency;

(14) the term "relief" includes the whole or part of any Commissioner's or Council's or agency (A) grant of money, assistance, license, authority, exemption, exception, privilege, or remedy; (B) recognition of any claim, right, immunity, privilege, exemption, or exception; and (C) taking of any other action upon the application or petition of, and beneficial to, any person;

(15) the term "proceeding" means any process of the Commissioner or Council or an agency as defined in paragraphs (6), (11), and (12) of this section; and

(16) the term "sanction" includes the whole or part of any Commissioner's or Council's or agency (A) prohibition, requirement, limitation, or other condition affecting the freedom of any person; (B) withholding of relief; (C) imposition of any form of penalty or fine; (D) destruction, taking, seizure, or withholding of property; (E) assessment of damages, reimbursement, restitution, compensation, costs, charges, or fees; (F) requirement, revocation, or suspension of a license; and (G) taking of other compulsory or restrictive action.

(Oct. 21, 1968, Pub. L. 90–614, § 3, 82 Stat. 1204.)

EFFECTIVE DATE

See note to section 1–1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–123, 2–129, 2–312, 2–406, 2–407, 2–708, 2–1809, 11–722, 11–1525, 29–417, 35–427, 35–1709, 36–130, 36–409, 40–302, 40–420, 45–1409, 47–2101.

NOTES TO DECISIONS

Applicability to Unemployment Compensation Proceedings

This chapter applies to proceedings under the Unemployment Compensation Act (§ 46–301 et seq.), and should be applied in posthearing procedure by the Unemployment Compensation Board in an unemployment compensation proceeding. *Woodridge Nursery School* v. *T. G. Jessup and District of Columbia Unemployment Compensation Board* (D.C. App. 1970, 269 A. 2d 199).

Contested case—notice

Since no notice was given that uniqueness of premises would be an issue of fact at hearing for determination of application for retailer's Class "C" license by Alcoholic Beverage Control Board or that such criterion was to be applied to the application, denial of application could not stand and matter required remand for further proceedings. *Palace Restaurant, Inc.* v. *Alcoholic Beverage Control Board* (D.C. App. 1970, 271 A. 2d 561).

§ 1–1503. Establishment of general procedures.

(a) The Commissioner and the Council shall, for themselves and for each subordinate agency, establish or require each subordinate agency to establish procedures in accordance with this chapter.

(b) Each independent agency shall establish procedures in accordance with this chapter.

(c) The procedures required to be established by subsections (a) and (b) of this section shall include requirements of practice before the Commissioner and the Council and each agency. (Oct 21, 1968, Pub. L. 90–614, § 4, 82 Stat. 1205.)

EFFECTIVE DATE

See note to section 1–1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–123, 2–129, 2–312, 2–406, 2–407, 2–708, 2–1809, 11–722, 11–1525, 29–417, 35–427, 35–1709, 36–130, 36–409, 40–302, 40–420, 45–1409, 47–2101.

§ 1–1504. Official publication.

(a) The Commissioner shall publish at regular intervals not less frequently than once every two weeks a bulletin to be known as the "District of Columbia Register," in which shall be set forth the full text of all rules filed in the office of the Commissioner during the period covered by each issue of such bulletin, except that the Commissioner may in his discretion omit from the District of Columbia Register rules the publication of which would be unduly cumbersome, expensive, or otherwise inexpedient, if, in lieu of such publication, there is included in the Register a notice stating the general subject matter of any rule so omitted and stating the manner in which a copy of such rule may be obtained.

(b) All courts within the District shall take judicial notice of rules published or of which notice is given in the District of Columbia Register pursuant to this section.

(c) Publication in the District of Columbia Register of rules adopted, amended, or repealed by the Commissioner or Council or by any agency shall not be considered as a substitute for publication in one or more newspapers of general circulation when such publication is required by statute.

(d) The Commissioner is authorized to publish in the District of Columbia Register, in addition to rules published under authority contained in subsection (a) of this section, (1) cumulative indexes to regulations which have been adopted, amended, or repealed; (2) information on changes in the organization of the District government; (3) notices of public hearings; (4) codifications of rules; and (5) such other matters as the Commissioner may from time to time determine to be of general public interest. (Oct. 21, 1968, Pub. L. 90–614, § 5, 82 Stat. 1206.)

EFFECTIVE DATE

See note to section 1–1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–123, 2–129, 2–312, 2–406, 2–407, 2–708, 2–1809, 11–722, 11–1525, 29–417, 35–427, 35–1709, 36–130, 36–409, 40–302, 40–420, 45–1409, 47–2101.

§ 1–1505. Public notice and participation in rulemaking.

(a) The Commissioner and Council and each independent agency shall, prior to the adoption of any rule or the amendment or repeal thereof, publish in the District of Columbia Register (unless all persons subject thereto are named and either personally served or otherwise have actual notice thereof in accordance with law) notice of the intended action so as to afford interested persons opportunity to submit data and views either orally or in writing, as may be specified in such notice. The publication or service required by this subsection of any notice shall be made not less than thirty days prior to the effective date of the proposed adoption, amendment, or repeal, as the case may be, except as otherwise provided by the Commissioner or Council or the agency upon good cause found and published with the notice.

(b) Any interested person may petition the Commissioner or Council or an independent agency, requesting the promulgation, amendment, or repeal of any rule. The Commissioner and Council and each independent agency shall prescribe by rule the form for such petitions, and the procedure for their submission, consideration, and disposition. Nothing in this chapter shall make it mandatory that the Commissioner or Council or any agency promulgate, amend, or repeal any rule pursuant to a petition therefor submitted in accordance with this section.

(c) Notwithstanding any other provision of this section, if, in an emergency, as determined by the Commissioner or Council or an independent agency, the adoption of a rule is necessary for the immediate preservation of the public peace, health, safety, welfare, or morals, the Commissioner or Council or such independent agency may adopt such rules as may be necessary in the circumstances, and such rule may become effective immediately. Any such emergency rule shall forthwith be published and filed in the manner prescribed in section 1–1506. No such rule shall remain in effect longer than one hundred and twenty days after the date of its adoption. (Oct. 21, 1968, Pub. L. 90–614, § 6, 82 Stat. 1206.)

EFFECTIVE DATE

See note to section 1–1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–123, 2–129, 2–312, 2–406, 2–407, 2–708, 2–1809, 11–722, 11–1525, 29–417, 35–427, 35–1709, 36–130, 36–409, 40–302, 40–420, 45–1409, 47–2101.

§ 1–1506. Filing and publishing of rules.

(a) Each agency, within thirty days after the effective date of this chapter, shall file with the Commissioner a certified copy of all of its rules in force on such effective date.

(b) The Commissioner shall keep a permanent register open to public inspection of all rules.

(c) Except in the case of emergency rules, each rule adopted after the effective date of this chapter by the Commissioner or Council or by any agency, shall be filed in the office of the Commissioner. No such rule shall become effective until after its publication in the District of Columbia Register, nor shall such rule become effective if it is required by law, other than this chapter, to be otherwise published, until such rule is also published as required in such law. (Oct. 21, 1968, Pub. L. 90–614, § 7, 82 Stat. 1207.)

EFFECTIVE DATE

See note to section 1–1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1–1505, 2–123, 2–129, 2–312, 2–406, 2–407, 2–708, 2–1809, 11–722, 11–1525, 29–417, 35–427, 35–1709, 36–130, 36–409, 40–302, 40–420, 45–1409, 47–2101.

§ 1–1507. Compilation of rules.

(a) As soon as practicable after the effective date of this chapter, the Commissioner shall have compiled, indexed, and published in the District of Columbia Register all rules adopted by the Commissioner and Council and each agency and in effect at the time of such compilation. Such compilations shall be promptly supplemented or revised as may be necessary to reflect new rules and changes in rules.

(b) Compilations shall be made available to the public at a price fixed by the Commissioner.

(c) The Commissioner must publish the first compilation required by subsection (a) of this section within one year after the effective date of this chapter and no rule adopted by the Commissioner or by the Council or by an agency before the date of such first publication which has not been filed and published in accordance with this chapter and which is not set forth in such compilation shall be in effect after one year after the effective date of this chapter. (Oct. 21, 1968, Pub. L. 90–614, § 8, 82 Stat. 1207.)

EFFECTIVE DATE

See note to section 1–1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–123, 2–129, 2–312, 2–406, 2–407, 2–708, 2–1809, 11–722, 11–1525, 29–417, 35–427, 35–1709, 36–130, 36–409, 40–302, 40–420, 45–1409, 47–2101.

§ 1–1508. Declaratory orders.

On petition of any interested person, the Commissioner or Council or an agency, within their discretion, may issue a declaratory order with respect to the applicability of any rule or statute enforceable by them or by it, to terminate a controversy (other than a contested case) or to remove uncertainty. A declaratory order, as provided in this section, shall be binding between the Commissioner or Council or the agency, as the case may be, and the petitioner on the state of facts alleged and established, unless such order is altered or set aside by a court. A declaratory order is subject to review in the manner provided in this chapter for the review of orders and decisions in contested cases, except that the refusal of the Commissioner or Council or of an agency to issue a declaratory order shall not be subject to review. The Commissioner and the Council and each agency shall prescribe by rule the form for such petitions and the procedure for their submission, consideration, and disposition. (Oct. 21, 1968, Pub. L. 90–614, § 9, 82 Stat. 1207.)

EFFECTIVE DATE

See note to section 1–1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–123, 2–129, 2–312, 2–406, 2–407, 2–708, 2–1809, 11–722, 11–1525, 29–417, 35–427, 35–1709, 36–130, 36–409, 40–302, 40–420, 45–1409, 47–2101.

§ 1–1509. Contested cases.

(a) In any contested case, all parties thereto shall be given reasonable notice of the afforded hearing by the Commissioner or Council or the agency, as the case may be. The notice shall state the time, place, and issues involved, but if, by reason of the nature of the proceeding, the Commissioner or Council or the agency determine that the issues cannot be fully stated in advance of the hearing, or if subsequent amendment of the issues is necessary, they shall be fully stated as soon as practicable, and opportunity shall be afforded all parties to present evidence and argument with respect thereto. Unless otherwise required by law, other than this chapter, any contested case may be disposed of by stipulation, agreed settlement, consent order, or default.

(b) In contested cases, except as may otherwise be provided by law, other than this chapter, the proponent of a rule or order shall have the burden of proof. Any oral and any documentary evidence may be received, but the Commissioner and Council and every agency shall exclude irrelevant, immaterial, and unduly repetitious evidence. Every party shall have the right to present in person or by counsel his case or defense by oral and documentary evidence, to submit rebuttal evidence, and to conduct such cross-examination as may be required for a full and true disclosure of the facts. Where any decision of the Commissioner or Council or any agency in a contested case rests on official notice of a material fact not appearing in the evidence in the record, any party to such case shall on timely request be afforded an opportunity to show the contrary.

(c) The Commissioner or Council or the agency shall maintain an official record in each contested case, to include testimony and exhibits, but it shall not be necessary to make any transcription unless a copy of such record is timely requested by any party to such case, or transcription is required by law, other than this chapter. The testimony and exhibits, together with all papers and requests filed in the proceeding, and all material facts not appearing in the evidence but with respect to which official notice is taken, shall constitute the exclusive record for order or decision. No sanction shall be imposed or rule or order or decision be issued except upon consideration of such exclusive record, or such lesser portions thereof as may be agreed upon by all the parties to such case. The cost incidental to the preparation of a copy or copies of a record or portion thereof shall be borne equally by all parties requesting the copy or copies.

(d) Whenever in a contested case a majority of those who are to render the final order or decision did not personally hear the evidence, no order or decision adverse to a party to the case (other than the Commissioner or an agency) shall be made until a proposed order or decision, including findings of fact and conclusions of law, has been served upon the parties and an opportunity has been afforded to each party adversely affected to file exceptions and present argument to a majority of those who are to render the order or decision, who, in such case, shall personally consider such portions of the exclusive record, as provided in subsection (c) of this section, as may be designated by any party.

(e) Every decision and order adverse to a party to the case, rendered by the Commissioner or Council or an agency in a contested case, shall be in writing and shall be accompanied by findings of fact and conclusions of law. The findings of fact shall consist of a concise statement of the conclusions upon each contested issue of fact. Findings of fact and conclusions of law shall be supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision and order and accompanying findings and conclusions shall be given by the Commissioner or Council or the agency, as the case may be, to each party or to his attorney of record. (Oct. 21, 1968, Pub. L. 90–614, § 10, 82 Stat. 1208.)

EFFECTIVE DATE

See note to section 1–1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–123, 2–129, 2–312, 2–406, 2–407, 2–708, 2–1809, 11–722, 11–1525, 29–417, 35–427, 35–1709, 36–130, 36–409, 40–302, 40–420, 45–1409, 47–2101.

NOTES TO DECISIONS

Final Decision

A final decision of the District of Columbia Unemployment Compensation Board, when rendered, must be in writing and must be accompanied by findings of fact and conclusions of law. *Woodridge Nursery School* v. *T. G. Jessup and District of Columbia Unemployment Compensation Board* (D.C. App. 1970, 269 A. 2d 199).

The major purpose of requiring findings of fact and conclusions of law by an agency is to enable the reviewing court to decide whether decision follows as a matter of law from facts stated as its basis, and also whether facts so stated have any substantial support in evidence. *Id.*

In this case, the court held that a two-sentence decision of the District of Columbia Unemployment Compensation Board, stating that decision of appeals examiner of certain date should be reversed because claimant believed that employer accepted offer to terminate her services on one date rather than on another date, was inadequate as a finding of fact and a conclusion of law. *Id.*

Hacker's license

In this case the court held that the Hackers' Board may not suspend or revoke a hacker's license unless it concludes after hearing and upon appropriate findings as required by this section that a valid regulation promulgated by the District of Columbia Council under section 47–2345(a) prescribing suspension or revocation has been violated, or unless it can show in the record "reliable, probative, and substantial evidence," supporting its own conclusion that suspension or revocation of the particular license wil be "in the interest of public decency" or necessary for "the protection of lives, limbs, health, comfort, and quiet of the citizens of the District of Columbia." *G. A. Proctor* v. *Hackers' Board, Government of the District of Columbia* (D.C. App. 1970, 268 A. 2d 267).

Notice

Since no notice was given that uniqueness of premises would be an issue of fact at hearing for determination of application for retailer's Class "C" license by Alcoholic Beverage Control Board or that such criterion was to be applied to the application, denial of application could not stand and matter required remand for further proceedings. *Palace Restaurant, Inc.* v. *Alcoholic Beverage Control Board* (D.C. App. 1970, 271 A. 2d 561).

Notice of Appeal

Even if the District of Columbia Unemployment Compensation Board deemed it unnecessary to permit a reply to petition for appeal in an unemployment compensation proceeding, the other party at least should have been given notice that the appeal had been filed. *Woodridge Nursery School* v. *T. G. Jessup and District of Columbia Unemployment Compensation Board* (D.C. App. 1970, 269 A. 2d 199).

Petition for Appeal

The District of Columbia Unemployment Compensation Board, in complying with this chapter, should prescribe specifically what information the petition for appeal in unemployment compensation case should contain, in order to prevent matters finding their way, by letter or otherwise, into record on appeal before Board when such matters were not before the appeals examiner. *Woodridge Nursery School* v. *T. G. Jessup and District of Columbia Unemployment Compensation Board* (D.C. App. 1970, 269 A. 2d 199).

Proposed Decision

Once an appeal has been filed with the District of Columbia Unemployment Compensation Board and the other party has been given notice of appeal, and before the Board can render its final decision, the Board must serve upon the parties a proposed decision, including findings of fact and conclusions of law; and each party must be given the opportunity to file exceptions to the proposed decision and to present argument to the Board or to a majority of those who are to render the final decision. *Woodridge Nursery School* v. *T. G. Jessup and District of Columbia Unemployment Compensation Board* (D.C. App. 1970, 269 A. 2d 199).

Sufficiency of findings of fact

The court held that all interested parties are entitled to know and District of Columbia Court of Appeals, on review, must know basis and reasons for action of Minimum Wage and Industrial Safety Board in issuing wage order. *L. Allenbuck, t/a etc. and Larimer's Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

In this case the findings of fact consisting of only a finding relating to general minimum weekly wage of $81.28 as sufficient to provide adequate maintenance and to protect health and finding that minimum wage in retail trade occupation should not be less than $2.00 an hour based on prescribed 40-hour work week were insufficient to support wage order issued by Minimum Wage and Industrial Safety Board. *Id.*

§ 1–1510. Judicial review.

Any person suffering a legal wrong, or adversely affected or aggrieved, by an order or decision of the Commissioner or Council or an agency in a contested case, is entitled to a judicial review thereof in accordance with this chapter upon filing in the District of Columbia Court of Appeals a written petition for review. If the jurisdiction of the Commissioner or Council or an agency is challenged at any time in any proceeding and the Commissioner or Council or the agency, as the case may be, takes jurisdiction, the person challenging jurisdiction shall be entitled to an immediate judicial review of that action, unless the court shall otherwise hold. The reviewing court may by rule prescribe the forms and contents of the petition and, subject to this chapter, regulate generally all matters relating to proceedings on such appeals. A petition for review shall be filed in such court within such time as such court may by rule prescribe and a copy of such petition shall forthwith be served by mail by the clerk of the court upon the Commissioner or Council or upon the agency, as the case may be. Within such time as may be fixed by rule of the court the Commissioner or Council or such agency shall certify and file in the court the exclusive record for decision and any supplementary proceedings, and the clerk of the court shall immediately notify the petitioner of the filing thereof. Upon the filing of a petition for review, the court shall have jurisdiction of the proceeding, and shall have power to affirm, modify, or set aside the order or decision complained

of, in whole or in part, and, if need be, to remand the case for further proceedings, as justice may require. Filing of a petition for review shall not in itself stay enforcement of the order or decision of the Commissioner or Council or the agency, as the case may be. The Commissioner or Council or the agency may grant, or the reviewing court may order, a stay upon appropriate terms. The court shall hear and determine all appeals upon the exclusive record for decision before the Commissioner or Council or the agency. The review of all administrative orders and decisions by the court shall be limited to such issues of law or fact as are subject to review on appeal under applicable statutory law, other than this chapter. In all other cases the review by the court of administrative orders and decisions shall be in accordance with the rules of law which define the scope and limitations of review of administrative proceedings. Such rules shall include, but not be limited to, the power of the court—

(1) so far as necessary to decision and where presented, to decide all relevant questions of law, to interpret constitutional and statutory provisions, and to determine the meaning or applicability of the terms of any action;

(2) to compel agency action unlawfully withheld or unreasonably delayed; and

(3) to hold unlawful and set aside any action or findings and conclusions found to be (A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law; (B) contrary to constitutional right, power, privilege, or immunity; (C) in excess of statutory jurisdiction, authority, or limitations or short of statutory jurisdiction, authority, or limitations or short of statutory rights; (D) without observance of procedure required by law, including any applicable procedure provided by this chapter; or (E) unsupported by substantial evidence in the record of the proceedings before the court.

In reviewing administrative orders and decisions, the court shall review such portions of the exclusive record as may be designated by any party. The court may invoke the rule of prejudicial error. (Oct. 21, 1968, Pub. L. 90–614, § 11, 82 Stat. 1209; July 29, 1970, Pub. L. 91–358, § 162, title I, 84 Stat. 582.)

AMENDMENT

1970—Section 162 of Act July 29, 1970, Public Law 91–358 amended (1) the first sentence, by striking out ", except" and all that follows in that sentence and inserting in lieu thereof a period; and (2) by repealing the last sentence. For contents of provisions stricken and repealed, see Supp. III to the 1967 edition of the Code.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 199(b)(7) of Pub. L. 91–358, provided: (7) The amendments made by section 162 shall take effect with respect to petitions filed after the effective date of this title [title I; for effective date of title, see note prec. § 11–101] for review of decisions or orders.

EFFECTIVE DATE

See note to section 1–1501.

CROSS REFERENCE

Other provisions for appeals from certain administrative orders and decisions, see section 11–722.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–123, 2–129, 2–312, 2–406, 2–407, 2–708, 2–1809, 11–722, 11–1525, 17–303, 17–305, 29–417, 35–427, 35–1709, 36–130, 36–409, 40–302, 40–420, 45–1409, 47–2101.

NOTES TO DECISIONS

Administrative action

Mere fact that proof tended to reveal at a suspension hearing before permit control officer of District of Columbia Department of Motor Vehicles that 17-year-old driver, whose license was suspended, was driving while under influence of alcohol did not thereby convert the proceedings, administrative in character, into a judicial proceeding of the kind Congress assigned exclusively to juvenile court. *K. P. Murphy, a minor etc.* v. *W. D. Heath, Director, etc.* (D.C. App. 1969, 256 A. 2d 421).

The court held that the exclusive jurisdiction in judicial proceedings conferred by Juvenile Court Act on the juvenile court is not a jurisdictional bar to the administrative action of suspending motor vehicle operator's permit of 17-year-old driver. *Id.*

Scope of review

Issues not urged at administrative level may not form the basis for overturning on review a decision denying license to operate multiple dwelling structure as apartment house. *J. D. Neuman Properties, Inc.* v. *District of Columbia, Board of Appeals and Review* (D.C. App. 1970, 268 A. 2d 605).

Substantial evidence rule

Under this section and sec. 25–106, the findings of the Alcoholic Beverage Control Board of District of Columbia can be overturned by District of Columbia Court of Appeals upon review only if they are without substantial evidence to support them. *Sophia's Inc.* v. *Alcoholic Beverage Control Board* (D.C. App. 1970, 268 A. 2d 799).

TITLE 1.—ADMINISTRATION, APPENDIX

REORGANIZATION PLANS AND ORDERS FOR DISTRICT OF COLUMBIA

REORGANIZATION PLAN NO. 5 OF 1952

(17 F.R. 5849, F.R. Doc. 52–7291; Filed, June 30, 1952, 11:51 a.m.)

Section 16 of the act of July 31, 1953, ch. 299, 67 Stat. 296, provided: "The authority of the Commissioners to establish agencies and offices in the government of the District of Columbia pursuant to section 4 of Reorganization Plan No. 5 of 1952, and to effect transfers of unexpended balances of appropriations, allocations, and other funds pursuant to section 5 of said Plan, shall not extend beyond June 30, 1954."

REORGANIZATION PLAN NO. 3 OF 1967

(32 F.R. 11669, F.R. Doc. 67–9507; Filed, Aug. 11, 1967, 8:45 a.m.)

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, June 1, 1967, pursuant to the provisions of chapter 9 of title 5 of the United States Code. Except for Part IV and sections 501, 502, and 503 the plan became effective August 11, 1967. Part IV and sections 501, 502, and 503 became effective November 3, 1967, when the nine members of the District of Columbia Council, took office.

GOVERNMENT OF THE DISTRICT OF COLUMBIA

PART I. GENERAL PROVISIONS

SECTION 101. *Definitions.* (a) As used in this reorganization plan, the term "the Corporation" means the body-corporate for municipal purposes created a government by the name of the "District of Columbia."

(b) References in this reorganization plan to any provision of the District of Columbia Code are references to the provisions of statutory law codified under that provision and include the said provision as amended, modified, or supplemented prior to the effective date of this reorganization plan (including modifications made by Reorganization Plan No. 5 of 1952 (66 Stat. 824)).

SEC. 102. *Reorganization.* The Corporation is hereby reorganized as provided in the following Parts of this reorganization plan.

PART II. DISTRICT OF COLUMBIA COUNCIL

SEC. 201. *Establishment of the Council.* (a) There is hereby established in the Corporation a Council which shall be known as the "District of Columbia Council" (hereinafter referred to as the Council).

(b) The Council shall be composed of a Chairman of the Council, a Vice Chairman of the Council, and seven other members, all of whom shall be appointed by the President of the United States, by and with the advice and consent of the Senate. At the time of his appointment each member of the Council shall be a citizen of the United States, shall have been an actual resident of the District of Columbia for three years next preceding his appointment, and shall during that period have claimed residence nowhere else. The Council shall be nonpartisan and no more than six of its members shall be adherents of any one political party. Appointments to the Council shall be made with a view toward achieving a Council membership which will be broadly representative of the District of Columbia community.

(c) One or more of the nine Council members hereinabove provided for may be appointed from among (1) retired civilian employees of the Government, (2) retired personnel of the armed services of the United States, and (3) retired personnel of the Corporation. Any person so appointed shall be eligible to receive the compensation provided for in section 204 hereof and appointment hereunder shall not affect his right to receive annuity, pension, or retired pay to which he is otherwise entitled.

(d) Three of the appointments first made under this section shall be for terms expiring February 1, 1968, three shall be for terms expiring February 1, 1969, and three shall be for terms expiring February 1, 1970; and thereafter appointments shall be made for terms of three years. Any appointment made to fill a vacancy shall be made only for the unexpired balance of the term. Any member of the Council may continue to serve as such member after the expiration of his term of office until his successor is appointed and qualifies. Any member of the Council may be removed by the President of the United States for neglect of duty or malfeasance in office or when the member has been found guilty of a felony or conduct involving moral turpitude.

(e) Each member of the Council before entering upon the discharge of his duties as such member shall take an oath or affirmation to support the Constitution of the United States and to faithfully discharge the duties imposed upon him as such member.

(f) Five members of the Council shall constitute a quorum for the transaction of business of the Council, except that four members shall constitute a quorum whenever two or more Council memberships are vacant.

SEC. 202. *Acting Chairman.* During the absence or disability of the Chairman of the Council, or whenever there be no Chairman, the Vice Chairman shall act as Chairman of the Council.

SEC. 203. *Secretary of the Council.* (a) There is hereby established the office of the Secretary of the Council. The Secretary shall be appointed by the Council from time to time.

(b) The Secretary shall perform such duties, and shall provide such services for the Council and its members, as the Council may prescribe. Personnel appointed to assist the Secretary in carrying out his responsibilities under this section shall be appointed by the Secretary subject to the approval of the Council.

SEC. 204. *Compensation.* The Chairman of the Council shall receive compensation at the rate of $10,000 per annum, the Vice Chairman shall receive compensation at the rate of $9,000 per annum, and each other member of the Council shall receive compensation at the rate of $7,500 per annum. The Secretary of the Council shall receive compensation determined in accordance with the classification laws as amended from time to time.

SEC. 205. *Performance of functions of the Council.* (a) The Council is hereby authorized to make from time to time such provisions as it deems appropriate to authorize the performance of any of its functions by the Commissioner of the District of Columbia (hereinafter provided for).

(b) The Council is hereby authorized to make from time to time, subject to the concurrence of the Commissioner of the District of Columbia, such provisions as it deems appropriate to authorize the performance of any of its functions by any officer, agency, or employee of the Corporation except the courts thereof.

(c) All functions provided for in regulations of the Council (including existing regulations continued in force without action by the Council) which are to be carried out by any officer, employee, or agency, who or which is in other respects under the jurisdiction of the Commissioner of the District of Columbia shall be carried out by such officer, employee, or agency under the direction and control of the Commissioner.

PART III. COMMISSIONER OF THE DISTRICT OF COLUMBIA

SEC. 301. *Establishment of office of Commissioner.* (a) There is hereby established in the Corporation an office with the title of "Commissioner of the District of Colum-

bia." The officer who holds that office is hereinafter referred to as the Commissioner.

(b) The Commissioner shall be appointed by the President of the United States, by and with the advice and consent of the Senate. The Commissioner shall at the time of his appointment be a citizen of the United States. Before entering upon the discharge of his duties the Commissioner shall take an oath or affirmation to support the Constitution of the United States and faithfully discharge the duties imposed upon him as Commissioner. The Commissioner shall receive compensation at the rate now or hereafter prescribed by law for offices and positions of Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314). Whenever both a Commissioner and an Assistant to the Commissioner appointed under section 302 hereof are in office at least one of them shall have been an actual resident of the District of Columbia for three years next preceding his appointment and have during that period claimed residence nowhere else. Both the Commissioner and the Assistant to the Commissioner shall reside in the District of Columbia during the time each holds office.

(c) The first appointment of a Commissioner hereunder shall be for a term expiring on February 1, 1969, and thereafter each appointment shall be made for a term of four years. Any appointment made to fill a vacancy in the office shall be made only for the unexpired balance of the term. A Commissioner may continue to serve as such after the expiration of his term of office until his successor is appointed and qualifies. The Commissioner is subject to removal by the President of the United States.

(d) The President may from time to time (1) designate officials of the Corporation (including the Chairman, the Vice Chairman, and the other members of the Council provided for in Part II of this reorganization plan if the President so elects) to act as Commissioner during the absence or disability of the Commissioner or in the event of a vacancy in the office of Commissioner, and (2) prescribe the order of succession in which the officials so designated shall so act.

SEC. 302. *Assistant to the Commissioner.* There is hereby established in the Corporation a new office which shall have the title "Assistant to the Commissioner of the District of Columbia." Such assistant (1) shall be appointed by the President of the United States, by and with the advice and consent of the Senate, (2) shall receive compensation at the rate now or hereafter prescribed by law for offices and positions of Level V of the Executive Schedule Pay Rates (5 U.S.C. 5316), and (3) shall assist the Commissioner as the Commissioner may direct in connection with the carrying out of the functions of the Commissioner.

SEC. 303. *Establishment of other new offices.* There are hereby established in the Corporation so many agencies and offices, with such names or titles, as the Commissioner shall from time to time determine. The said offices shall be filled by appointment by, or under the authority of, the Commissioner. Each officer so appointed shall perform the functions delegated or otherwise assigned to him in pursuance of this reorganization plan and shall receive compensation to be fixed in accordance with the classification laws as amended from time to time.

SEC. 304. *Transfer of personnel, property, records, and funds.* With respect to personnel, property, records, and unexpended balances of appropriations, allocations and other funds, available or to be made available, relating to functions transferred by the provisions of this reorganization plan, the Commissioner may from time to time effect such transfers between the agencies of the Corporation (including transfers between the Commissioner and any other agency of the Corporation) as he may deem necessary in order to carry out the provisions of this reorganization plan.

SEC. 305. *Performance of functions of Commissioner.* The Commissioner is hereby authorized to make from time to time such provisions as he deems appropriate to authorize performance of his functions by any other officer, or by any employee or agency, of the Corporation except the courts thereof.

PART IV. TRANSFERS OF FUNCTIONS

SEC. 401. *Transfer of functions to Commissioner.* Except as otherwise provided in this reorganization plan, all functions of the Board of Commissioners of the District of Columbia, including all functions of the President of that Board and all functions of each other member of that Board and including also the executive power vested therein (D.C. Code, sec. 1–218), are hereby transferred to the Commissioner of the District of Columbia.

SEC. 402. *Transfer of functions to Council.* The following regulatory and other functions now vested in the Board of Commissioners of the District of Columbia are hereby transferred to the Council (subject to the provisions of section 406 of this reorganization plan):

1. General provisions

(1) Making and modifying police regulations under D.C. Code, sec. 1–224 (including the prescribing of penalties under paragraph "Eleventh" thereof).

(2) Prescribing penalties under D.C. Code, sec. 1–224a.

(3) Making and modifying regulations to regulate the keeping and leashing of dogs, and to regulate or prohibit the running at large of dogs, including penalties for violations of such regulations, under D.C. Code, sec. 1–224b.

(4) Making regulations under D.C. Code, secs. 1–226 and 1–227.

(5) Making building regulations under D.C. Code, sec. 1–228.

(6) Making and publishing such orders as may be necessary to regulate the construction, repair and operation of elevators and prescribing such means of security as may be found necessary to protect life and limb under D.C. Code, sec. 1–229.

(7) Issuing proclamations related to the control of rabies under D.C. Code, sec. 1–230.

(8) Making regulations relating to outdoor signs and other forms of exterior advertising under D.C. Code, sec. 1–231.

(9) With respect to the functions transferred to the Council by the provisions of this reorganization plan, (i) making investigations or examinations of municipal matters, and (ii) administering oaths to witnesses, under D.C. Code, sec. 1–237.

(10) Reporting annually to the Congress concerning the functions transferred to the Council by the provisions of this reorganization plan under D.C. Code, sec. 1–238.

(11) Making regulations to provide for the waiver of payment of fees (by persons in the military service of the United States) under D.C. Code, sec. 1–244(a).

(12) Making and adopting regulations relating to the furnishing and keeping in force a bond by persons, firms, or corporations engaged in the business of plumbing or gas fitting, or of installing, maintaining, or repairing heating, ventilating, air-conditioning, or mechanical refrigerating apparatus, equipment, appliances, systems, or parts thereof, or of installing, maintaining, or repairing apparatus, equipment, fixtures, appliances, or wiring, using or conducting electric current under D.C. Code, sec. 1–244(b).

(13) Prescribing regulations for the examination of the qualifications and fitness of applicants for licenses to engage in the business referred to in the immediately preceding paragraph hereof under D.C. Code, sec. 1–244(b).

(14) Naming highways and naming and renaming circles, bridges, buildings, or other public places or properties under D.C. Code, sec. 1–244(f).

(15) Prescribing penalties under D.C. Code, sec. 1–244 (h).

(16) Fixing and changing periods for which licenses, certificates, or registrations may be issued under D.C. Code, sec. 1–257.

(17) Prescribing regulations relating to holidays for District of Columbia employees under D.C. Code, sec. 1–260.

(18) The reception and entertainment of officials of foreign, State, local, or Federal governments and other dignitaries and eminent persons visiting in or returning to the District of Columbia under D.C. Code, sec. 1–262.

(19) Prescribing penalties under D.C. Code, sec. 1–264.

(20) Prescribing rules and regulations relating to notaries public under D.C. Code, sec. 1–501.

(21) Making and publishing general orders regulating the platting and subdividing of lands and grounds under D.C. Code, sec. 1–613.

(22) Prescribing a schedule of fees for surveyor's services under D.C. Code, sec. 1–629.

(23) Exempting certain boilers from provision prohibiting using steam boilers without first obtaining certificate of inspection under D.C. Code, sec. 1–705.

(24) Making regulations to carry out the provisions of the Act of June 25, 1936 under section 14 of that Act (D.C. Code, sec. 1–715).

(25) Making rules and regulations respecting the production, use, and control of electricity, and prescribing fees, under D.C. Code, sec. 1–719.

(26) Making and modifying regulations governing plumbing, house drainage, and sewers, and making and modifying regulations governing the examination, registration, and licensing of plumbers and the practice of the business of plumbing and gas fitting, under D.C. Code, sec. 1–725.

(27) Establishing fees for permits to connect buildings, premises, or establishments with sewer, water, or gas mains, or other underground structures, and establishing fees for permits granted to make excavations, under D.C. Code, sec. 1–726.

(28) Consulting concerning the formation of one or more citizen advisory councils under D.C. Code, sec. 1–1004 (e) (40 U.S.C. 71c(e)).

(29) Defining and redefining the central area of the District of Columbia under D.C. Code, sec. 1–1005(c) (40 U.S.C. 71d(c)).

(30) Approving a major thoroughfare plan or parts thereof or revisions thereof, and proposing revision of the major thoroughfare plan or parts thereof, under D.C. Code, sec. 1–1006(a) (40 U.S.C. 71e(a)).

(31) Consulting with National Capital Planning Commission prior to final adoption of the thoroughfare plan under D.C. Code, sec. 1–1006(b) (40 U.S.C. 71e(b)).

(32) Submitting a copy of the District's advance program of capital improvements to the National Capital Planning Commission under D.C. Code, sec. 1–1007 (40) U.S.C. 71f).

(33) With respect to each inaugural period: (i) making regulations necessary to secure the preservation of public order and protection of life, health, and property, (ii) making regulations respecting the standing, movement, and operation of vehicles, (iii) fixing conditions with respect to licenses to peddlers and vendors, and (iv) fixing fees for the privilege of selling goods, wares, and merchandise, under D.C. Code, sec. 1–1202 (36 U.S.C. 722).

2. Regulation of professions, occupations, etc.

(34) Making and altering rules for the conduct of business of agency administering, and for the execution and enforcement of, the Healing Arts Practice Act of 1928, under D.C. Code, sec. 2–103, and adopting and altering a common seal thereunder.

(35) Establishing minimum standards of preprofessional and professional education in the healing art and establishing minimum standards for hospitals for interne training under D.C. Code, sec. 2–103a(a).

(36) Adopting and promulgating rules and regulations prescribing (i) the terms and conditions under which a tissue bank license may be issued and renewed, (ii) the fees to be paid by the issuance and renewal of such licenses, (iii) the duration of such licenses, (iv) the grounds for the suspension and revocation of such licenses, (v) the operation of tissue banks, (vi) the conditions under which tissue may be processed, preserved, stored, and transported, and (vii) the making, keeping, and disposition of records by tissue banks and by other persons under D.C. Code, sec. 2–253(b).

(37) Making and adopting rules and regulations to effect the purposes of the Act of July 2, 1940, relating to the licensing of dentists and the practice of dentistry (including the making of rules regulating professional announcements and the number of offices of a licensed dentist and including also the prescribing of rules and regulations to permit the use in hospitals of dental internes) under D.C. Code, sec. 2–302.

(38) Adopting and amending by-laws carrying into effect the Act of February 9, 1907, relating to the registration of graduate nurses, under D.C. Code, secs. 2–403 and 2–406.

(39) Fixing, under D.C. Code, sec. 2–408, the fees referred to in clause (c) thereof.

(40) Adopting and prescribing rules and regulations to carry into effect the Act of September 6, 1960, and prescribing minimum curricula and standards for schools and programs, under D.C. Code, sec. 2–427(a).

(41) Obtaining or requiring the furnishing of information under oath or affirmation or otherwise necessary to assist in prescribing any regulation under the Act of September 6, 1960, under D.C. Code, sec. 2–427(b).

(42) With respect to the functions transferred by the paragraph immediately preceding this paragraph, administering oaths and affirmations, requiring by subpoena or otherwise the attendance and testimony of witnesses and the production of documents, and making application to the Court for an order requiring obedience thereto, under D.C. Code, sec. 2–427(b).

(43) Determining the qualifications, prescribing the terms of office, and fixing the compensation of members of the physical therapists examining board under D.C. Code, sec. 2–455.

(44) Adopting and prescribing rules and regulations to carry into effect the Act of September 22, 1961, under D.C. Code, sec. 2–456(a).

(45) Obtaining or requiring the furnishing of information under oath or affirmation or otherwise necessary to assist in prescribing any regulation under the Act of September 22, 1961 under D.C. Code, sec. 2–456(b).

(46) With respect to the functions transferred by the paragraph immediately preceding this paragraph, administering oaths and affirmations, requiring by subpoena or otherwise the attendance and testimony of witnesses and the production of documents, and making application to the Court for an order requiring obedience thereto, under D.C. Code, sec. 2–456(b).

(47) Changing the periods for which registrations as physical therapists or renewals thereof may be issued under D.C. Code, sec. 2–461(a).

(48) Altering, amending, or otherwise changing educational standards (relating to optometrists) under D.C. Code, sec. 2–512.

(49) Making and altering rules for the conduct of business of agency administering, and for the execution and enforcement of, the Act of May 7, 1906, under D.C. Code, sec. 2–608.

(50) Adopting rules and regulations respecting the eligibility of candidates for admission to the practice of podiatry and the scope of examinations, under D.C. Code, sec. 2–702, and adopting a seal thereunder.

(51) Making, altering, and amending rules and regulations to carry into effect the provisions of the Act of February 1, 1907, relating to veterinarians, and requiring the giving of bond and prescribing the form and penalty thereof, under D.C. Code, sec. 2–802.

(52) Determining, authorizing, and directing the subjects to be included in examinations for veterinarians under D.C. Code, sec. 2–803.

(53) Making reciprocal arrangements with authorities of the several states and territories of the United States concerning the licensing of veterinarians under D.C. Code, sec. 2–804.

(54) Making rules for the examination and registration of applicants for (architects') certificates under D.C. Code, sec. 2–1001.

(55) Fixing fees, relating to architects and applicants, under D.C. Code, sec. 2–1023.

(56) With respect to the functions transferred by paragraphs (54) and (55), above, requiring the attendance of persons and the production of books and papers, requiring persons to testify, issuing subpoenas, and referring matters to a judge, under D.C. Code, sec. 2–1029.

(57) Adopting rules and sanitary regulations to carry out the provisions of the Act of June 7, 1938 (relating to barbers) under D.C. Code, sec. 2–1103.

(58) Making and issuing regulations (relating to the posting of prices in barber shops and violations of such regulations) under D.C. Code, sec. 2–1114a.

(59) Making and amending rules and regulations to carry out the purposes of the Act of December 20, 1944 (relating to boxing contests and exhibitions), under D.C. Code, sec. 2–1212.

(60) Making rules and regulations to carry out the provisions of the Act of June 7, 1938 (relating to cosmetologists) under D.C. Code, sec. 2–1303.

(61) Fixing fees for licenses (relating to plumbers) under D.C. Code, sec. 2–1405.

(62) Providing rules and regulations (relating to examinations for steam and other operating engineers), and prescribing tests to which engines and steam boilers shall be subjected, under D.C. Code, sec. 2–1502.

(63) All authority and responsibilities of the Board of Commissioners of the District of Columbia under D.C. Code, secs. 2–1724, 2–1727, and 2–1728 (relating to the District of Columbia Stadium).

(64) Regulating the certification of engineers-in-training, and prescribing examinations for the purpose of testing the applicant's knowledge, under D.C. Code, sec. 2–1808(c).

(65) Prescribing a certificate for issuance to applicants who meet requirements for certification as engineers-in-training under D.C. Code, sec. 2–1808(j).

(66) Adopting an official seal under D.C. Code, sec. 2–1808(l).

(67) Adopting, amending, rescinding, and promulgating administrative rules and regulations to carry into effect the Act of September 19, 1950, under D.C. Code, sec. 2–1808(n).

(68) With respect to other functions transferred to the Council by the provisions of this reorganization plan, requiring the attendance of witnesses and the production of books and papers, requiring witnesses to testify, issuing subpenas, and referring matters to a judge under D.C. Code, sec. 2–1808(o).

(69) Fixing the form and amount of bond required to be furnished under D.C. Code, sec. 2–1813.

(70) Prescribing additional information to be contained in applications for pawnbrokers' licenses under D.C. Code, sec. 2–2003(b)(4).

(71) Making rules and regulations for the enforcement of the Act of August 6, 1956, under D.C. Code, sec. 2–2007(a).

(72) Determining or fixing a maximum rate of interest for pawnbroker loans and redetermining and refixing any such maximum rate under D.C. Code, sec. 2–2009(a).

(73) Making rules and regulations to carry out the Act of August 6, 1956 (relating to pawnbrokers) under D.C. Code, sec. 2–2017.

(74) Prescribing by regulation the form of and the information to be contained in solicitor information cards, and prescribing the manner of reproduction and authentication of such cards, under D.C. Code, sec. 2–2102(a)(7).

(75) Prescribing by regulation the terms and conditions for exempting solicitations from certain provisions of the Act of July 10, 1957, under D.C. Code, sec. 2–2103(d).

(76) Prescribing the form or forms of application for certificate of registration, and requiring by regulation the information to be contained in each such application, under D.C. Code, sec. 2–2104(a).

(77) Promulgating regulations to carry out the Act of July 10, 1957 (relating to charitable solicitations) under D.C. Code, sec. 2–2110.

(78) Requiring the furnishing of bond as a condition to the issuance of license to engage in the home improvement business under D.C. Code, sec. 2–2301.

(79) Establishing classes and subclasses of persons licensed to engage in the home improvement business, and specifying the amount and conditions of the bond or other security to be deposited by each member of any such class or subclass, under D.C. Code, sec. 2–2302(a).

(80) By regulation, requiring applicants for licenses or licensees (i) to furnish and keep in force a bond or bonds or other security, and (ii) to procure and keep in force public liability insurance or property damage insurance, or both, under D.C. Code, sec. 2–2302(a) (1) and (2).

3. Public welfare

(81) Making rules and regulations relating to the admission of persons to institutions under D.C. Code, sec. 3–108.

(82) Establishing rules for receiving and temporarily caring for children under D.C. Code, sec. 3–116.

(83) Establishing rules and regulations to carry out the provisions of the Act of October 15, 1962 (relating to public assistance) under D.C. Code, sec. 3–202(b)(2).

(84) Approving regulations in accordance with which shall be determined the amount of public assistance which any person shall receive under D.C. Code, sec. 3–204(a).

(85) Prescribing the manner and form in which application for public assistance shall be made, under D.C. Code, sec. 3–205.

(86) Prescribing regulations governing the custody, use, and preservation of records, papers, files and communications relating to public assistance under D.C. Code, sec. 3–211(a).

(87) Approving rules and regulations relating to funeral expenses under D.C. Code, sec. 3-213.

(88) Prescribing rules and regulations in accordance with which hearings shall be conducted under D.C. Code, sec. 3–214.

4. Police and fire

(89) Subdividing the Metropolitan Police District into police districts and precincts under D.C. Code, sec. 4–102.

(90) Determining and fixing limits of age for appointments to the police department under D.C. Code, sec. 4–107.

(91) Prescribing general regulations regarding special policemen under D.C. Code, sec. 4–115.

(92) Making rules and regulations under D.C. Code, sec. 4–117.

(93) Making and modifying rules and regulations for the proper government, conduct, discipline, and good name of the Metropolitan Police force, and fixing penalties, under D.C. Code, sec. 4–121.

(94) Making and amending rules of procedure before trial boards under D.C. Code, sec. 4–122.

(95) Changing, altering, amending, or abolishing rules and regulations of the Metropolitan Police Force under the last proviso of D.C. Code, sec. 4–122.

(96) Providing rules for uniform clothing of the police force under D.C. Code, sec. 4–130.

(97) Prescribing the area constituting the "Washington, District of Columbia, metropolitan district" under D.C. Code, sec. 4–132a(b).

(98) Causing the Metropolitan Police force to keep records under D.C. Code, sec. 4–134(5).

(99) Determining traffic violations and other petty offenses with respect to which records are not required to be kept under D.C. Code, sec. 4–134a(a).

(100) Making rules and regulations regarding the written return of arrests under D.C. Code, sec. 4–142.

(101) Making rules and regulations in reference to the detention of witnesses under D.C. Code, sec. 4–144.

(102) Providing by regulation for disposition of property under the proviso of D.C. Code, sec. 4–156(e).

(103) Determining by regulation the disposition of property under D.C. Code, sec. 4–159(c).

(104) Determining, by regulation, disposition of property under D.C. Code, sec. 4–160(a).

(105) By regulation requiring that bonds be furnished and kept in force by persons licensed as private detectives under D.C. Code, sec. 4–171a.

(106) Fixing amounts of bonds obtained to secure against loss resulting from any act of dishonesty or other act by any officer of the Metropolitan Police Force under D.C. Code, sec. 4–186.

(107) Making, altering, or amending rules and regulations relating to officers and members of the fire department, and changing the rules and regulations of the fire department promulgated before June 20, 1906, under D.C. Code, sec. 4–402.

(108) Determining and fixing limits of age for original appointments to the fire department under D.C. Code, sec. 4–403.

(109) Prescribing rules and regulations for installing in suburbs extra apparatus and appliances belonging to the fire department under D.C. Code, sec. 4–411.

(110) Entering into and renewing reciprocal agreements under D.C. Code, sec. 4–414(a).

(111) Promulgating rules and regulations regarding the selection and reporting of the names of privates and sergeants possessed of outstanding efficiency under D.C. Code, sec. 4–802.

(112) Promulgating regulations regarding additional compensation for working on holidays under D.C. Code, sec. 4–807.

(113) Designating holidays with respect to officers and members of the Metropolitan Police force and the Fire Department under D.C. Code, sec. 4–808.

(114) Promulgating regulations to carry out the intent and purposes of the Act of August 1, 1958 under D.C. Code, sec. 4–835.

(115) [1] Promulgating regulations (regarding determination whether injury or disease resulted from the performance of duty) under D.C. Code, sec. 4–909(b) (5 U.S.C. 6324(b)).

5. Building restrictions and regulations

(116) Making regulations for the care and preservation of parkings (established under the Act of June 21, 1906) under D.C. Code, sec. 5–205.

(117) Determining numbers and material, type, and construction of fire escapes under D.C. Code, sec. 5–301.

(118) Adopting regulations to accomplish the purposes and carry into effect the provisions of the Act of March 19, 1906 (relating to fire escapes and safety) under D.C. Code, sec. 5–304.

(119) Promulgating regulations requiring the provision, installation, and maintenance of means of egress, guide signs, guide lights, exit lights, hall and stairway lights, standpipes, fire extinguishers, alarm gongs, striking stations, and other appliances under D.C. Code, sec. 5–317.

(120) Regulating the maximum height of buildings on blocks immediately adjacent to public buildings or to the side of any public building for which plans have been prepared and money appropriated at the time of the application for the permit to construct the building under D.C. Code, sec. 5–405.

(121) Preparing (in consultation with the National Capital Planning Commission) plats defining the areas within which applications for building permits shall be submitted to the Commission of Fine Arts under D.C. Code, sec. 5–411.

(122) Approving boundaries of project areas and redevelopment plans and modifications of redevelopment plans under D.C. Code, secs. 5–705 and 5–711.

(123) Approving the entering by the District of Columbia Redevelopment Land Agency into contracts and agreements, relating to financial assistance, under D.C. Code, sec. 5–717a(a).

(124) Approving the acceptance by the District of Columbia Redevelopment Land Agency of advances of funds for surveys and plans, and approving transfers of funds by that Agency to the National Capital Planning Commission, under D.C. Code, sec. 5–717a(b).

(125) Entering into agreements with the District of Columbia Redevelopment Land Agency respecting certain cash payments from funds of the District of Columbia under D.C. Code, sec. 5–717a(d).

(126) Approving releases, modifications, and departures from features and details of approved redevelopment plans under D.C. Code, sec. 5–718(a).

(127) Transferring all right, title, and interest in and to part or all of certain property to the District of Columbia Redevelopment Land Agency under D.C. Code, sec. 5–720.

(128) Determining whether such property is necessary to the development of the southwest section in accordance with an approved urban renewal plan, determining how much of the property is necessary to carry out such urban renewal plan, and transferring and donating to the Agency all right, title, and interest of the United States in and to the property under D.C. Code, sec. 5–721.

(129) Transferring to the District of Columbia Redevelopment Land Agency jurisdiction regarding transferred property under D.C. Code, sec. 5–722.

(130) Prescribing regulations for making relocation payments to individuals, families, business concerns, and non-profit organizations for their moving expenses and actual direct losses caused by their displacement from real property acquired for public works projects under D.C. Code, sec. 5–729.

(131) Making regulations to carry out the purposes of the Act of October 6, 1964 under D.C. Code, sec. 5–732.

(132) Adopting regulations to bring horizontal property regimes into compliance with the laws and regulations in effect in the District of Columbia under D.C. Code, sec. 5–928.

See footnote at end.

6. Health and safety

(133) Altering, amending, or repealing ordinances of the former Board of Health which were legalized by the Act of April 24, 1880 under D.C. Code, sec. 6–114.

(134) Promulgating rules and regulations to prevent and control the spread of communicable diseases under D.C. Code, sec. 6–118.

(135) By regulation, denominating the diseases within the meaning of "communicable diseases" under D.C. Code, sec. 6–119.

(136) Prescribing penalties for violation of communicable disease regulations under D.C. Code, sec. 6–119h.

(137) Making rules and regulations governing the certification of the given name of a child under D.C. Code, sec. 6–301(a).

(138) Adopting rules and regulations governing the filing of reports of births and the issuance of delayed birth certificates under D.C. Code, sec. 6–301(b).

(139) Making regulations for the collection and disposition of garbage and annexing penalties to such regulations under D.C. Code, sec. 6–501.

(140) Making regulations to carry out the purposes of the Act of March 4, 1929 (relating to combustible refuse) under D.C. Code, sec. 6–507.

(141) Specifying fees for disposing of combustible material in incinerators built by the District of Columbia, and designating routes for hauling or transporting the material, under D.C. Code, sec. 6–511.

(142) Prescribing by regulation the manner of describing, on mattress tags, material used in mattresses under D.C. Code, sec. 6–603.

(143) Making regulations to regulate the design, construction, and maintenance of disposal systems, and the handling, storage, treatment, and disposal of wastes, under D.C. Code, sec. 6–703.

(144) Making and promulgating classifications and regulations for the installation and operation of combustion and other devices susceptible for use in such manner as to violate purposes of smoke prevention law, amending or rescinding such regulations, and promulgating amended for additional regulations under D.C. Code, sec. 6–802.

(145) Making rules and regulations to carry out authority to take measures for the protection of persons and property under D.C. Code, sec. 6–1009 (preamble).

(146) Making regulations to govern the establishment, maintenance, and operation of civil defense units and organizations and the discipline of the members thereof under D.C. Code, sec. 6–1009(a).

(147) Prescribing penalties for violations of regulations promulgated pursuant to the Act of December 26, 1941 under D.C. Code, sec. 6–1010.

(148) Promulgating regulations requiring that cancer, sarcoma, lymphoma (including Hodgkin's disease), leukemia, and all other malignant growths be reported under D.C. Code, sec. 6–1301.

(149) Prescribing a penalty or fine for the violation of any regulation promulgated under the Act of July 27, 1951 under D.C. Code, sec. 6–1304.

7. Highways, streets, and bridges

(150) Making regulations for keeping in repair streets, avenues, alleys, sewers, and other works under D.C. Code, sec. 7–101.

(151) Changing the name of any street, road, avenue, or other highway when there is duplication of names under D.C. Code, sec. 7–106.

(152) Naming or renaming streets, avenues, alleys, highways, and reservations under D.C. Code, sec. 7–107.

(153) Determining the extent to which plans for the extension of a permanent system of highways may be out of conformity with the street plan of the city of Washington under D.C. Code, sec. 7–108.

(154) Naming streets, avenues, alleys, and reservations under D.C. Code, secs. 7–112 and 7–116.

(155) Abandoning or readjusting streets or proposed streets (in order to provide grounds for educational, religious, or similar institutions) under D.C. Code, sec. 7–113.

(156) Determining the extent to which plans for the extension of highways may be out of conformity with street plan, and naming streets, avenues, alleys, and reservations, under D.C. Code, sec. 7–116.

(157) Accepting the dedication of streets, prescribing regulations in regard to the height of parking and the projection of buildings beyond the building line, and making determinations respecting the District of Columbia having right-of-way through parking, under D.C. Code, sec. 7–117.

(158) Determining the extent to which new highway plans may be out of conformity with the street plan under D.C. Code, sec. 7–122.

(159) Opening, extending, or widening streets, avenues, roads, or highways under D.C. Code, sec. 7–201.

(160) Closing alleys or parts of alleys under D.C. Code, sec. 7–302.

(161) Accepting the dedication of alleys, and closing existing alleys, under D.C. Code, sec. 7–303.

(162) Closing alleys or parts of alleys under D.C. Code, sec. 7–304.

(163) Closing alleys under D.C. Code, sec. 7–305.

(164) Making orders declaring existing alleyways closed and opening new substitute alleyways, under D.C. Code, sec. 7–306.

(165) Making an order canceling existing subdivision of any square and obliterating alleys therein under D.C. Code, sec. 7–308.

(166) Closing alleys or parts of alleys under D.C. Code, sec. 7–309.

(167) Setting land aside for alley purposes under D.C. Code, sec. 7–310.

(168) Closing any street, road, highway, or alley, or any part of any thereof (including the making of the required finding thereon) under D.C. Code, sec. 7–401.

(169) Making regulations for the safety of the public using bridges and for the lighting and the police control of bridges under D.C. Code, sec. 7–501.

(170) Ordering the removal of abandoned street railway tracks, settling claims against D.C. Transit System, Inc., for the paving of abandoned track areas, and determining terms and conditions as to time of payment or payments under D.C. Code, sec. 7–604a.

(171) Regulating the location and depth of gas mains under D.C. Code, sec. 7–706.

(172) Jurisdiction and control over MacArthur Boulevard (formerly Conduit Road) and levying assessments for public improvements, under D.C. Code, sec. 7–1201 (40 U.S.C. 53a).

(173) Denominating portions of streets as business streets, and prescribing general regulations, under D.C. Code, sec. 7–1205.

(174) Granting a Railroad Company permission to lay, maintain, and use sidetracks and sidings under D.C. Code, sec. 7–1210.

(175) Approving the point or points at which additional stations or depots may be constructed, established, and maintained, and approving plans for connecting tracks and elevated structures, under D.C. Code, sec. 7–1212.

(176) Approving the construction of railroad tracks and appurtenant turnouts, branch tracks, and sidings under D.C. Code, sec. 7–1218; and approving plans for the construction of branch sidings under the Act of September 26, 1961 (D.C. Code, note at sec. 7–1218).

(177) Approving the location and construction of railroad tracks, turnouts, branch tracks, spurs, and sidings, under D.C. Code, sec. 7–1219.

(178) Approving wage rates fixed and adjusted from time to time by a wage board, under D.C. Code, sec. 7–1236.

8. Parks

(179) Setting aside space in the streets and avenues for park purposes, denominating portions of streets as business streets, and prescribing general regulations under D.C. Code, sec. 8–108.

(180) Jurisdiction and control of the street parking in streets and avenues under D.C. Code, sec. 8–110.

(181) Transferring jurisdiction over properties or parts thereof to Federal authorities, and accepting from Federal authorities jurisdiction over properties or parts thereof, under D.C. Code, sec. 8–115 (40 U.S.C. 122).

(182) Making rules and regulations for the management of a public convenience station, and fixing charges for the use of such station under D.C. Code, sec. 8–138.

(183) Making rules and regulations for the management of public convenience stations, and fixing charges for the use of the conveniences, under D.C. Code, sec. 8–140.

(184) Accepting land and dedications of land under D.C. Code, sec. 8–162.

(185) Making regulations relating to a beach and dressing houses under D.C. Code, sec. 8–168.

9. Public buildings and grounds

(186) Making rules and regulations for the government and control of wharves, piers, bulkheads, structures, adjacent waters, basins, slips, docks, and land under water under D.C. Code, sec. 9–101.

(187) Making rules and regulations for the government and proper care of property and annexing penalties to said rules and regulations, and making rules and regulations in regard to building and repairing wharves, the rental thereof, and the rate of wharfage, under D.C. Code, sec. 9–102.

(188) Fixing penalties of bonds of employees under D.C. Code, sec. 9–134(a).

(189) Prescribing by regulation the uniform and identification badge to be worn by individuals under D.C. Code, sec. 9–134(b).

(190) Making and amending regulations for the protection of life and property in or on institutional buildings or grounds under D.C. Code, sec. 9–135.

(191) Acquiring certain squares and reservations, including buildings and other structures thereon, as a site for a municipal center, and closing and vacating portions of streets and alleys, under D.C. Code, sec. 9–201.

(192) Making the finding that real estate is no longer required for a public purpose, under D.C. Code, sec. 9–301 (40 U.S.C. 72c).

(193) Exchanging District-owned land or part thereof under D.C. Code, sec. 9–401.

10. Weights, measures, and markets

(194) Prescribing the manner of approving and sealing, stamping, or marking devices or appliances under D.C. Code, sec. 10–103.

(195) Establishing and allowing variation, tolerances, and exemptions, as to small packages, under D.C. Code, sec. 10–117.

(196) Fixing standard loads by which split wood may be sold under D.C. Code, sec. 10–118.

(197) Establishing tolerances and specifications for scales, weights, measures, weighing or measuring instruments or devices, and containers under D.C. Code, sec. 10–127.

(198) Prescribing regulations governing the granting of licenses for the location of public scales, and approving and fixing fees, under D.C. Code, sec. 10–128.

(199) Making regulations for the control, regulation, and supervision of markets under D.C. Code, sec. 10–130.

(200) Making regulations for the control, regulation, and operation of the municipal fish wharf and market under D.C. Code, sec. 10–135.

(201) Making and promulgating rules and regulations for the control and operation of the wholesale farmers' produce market, and establishing a scale of charges, under D.C. Code, sec. 10–137.

11. Feeble-minded persons

(202) Adopting regulations relating to receiving feeble-minded persons into the District Training School under D.C. Code, sec. 21–1102.

(203) Prescribing general conditions for granting paroles to patients under D.C. Code, sec. 21–1120.

12. Criminal offenses

(204) Restricting, prohibiting, regulating, and controlling hunting and fishing and the taking, possession, and sale of wild animals under D.C. Code, sec. 22–1628.

(205) Prescribing regulations regarding the disposal of property under D.C. Code, sec. 22–1630(a) (last sentence).

(206) Making, altering, and amending harbor regulations under D.C. Code, sec. 22–1701.

(207) Establishing rules and regulations for the administration of the Act of August 12, 1937 (relating to the marking and labeling of packages of potatoes) under D.C. Code, sec. 22–3409.

(208) Making rules and regulations to carry out the Act of December 16, 1941 (relating to food which is unwholesome or unfit for use) under D.C. Code, sec. 22–3419.

13. Execution fees

(209) Fixing the fees of an executioner and his assistants for services under D.C. Code, sec. 23–702.

14. Prisoners; institutions

(210) Rules and regulations permitting the discharge of parolees under D.C. Code, sec. 24–204(b).

(211) Prescribing regulations for employment of persons sentenced to imprisonment in the jail under D.C. Code, sec. 24–412.

(212) Prescribing regulations regarding the sale of surplus products under D.C. Code, sec. 24–418.

(213) Rules and regulations for the government of institutions under D.C. Code, sec. 24–442.

15. Alcoholic beverages

(214) Prescribing other authority under D.C. Code, sec. 25–106 (last sentence).

(215) Prescribing, making, altering, and amending rules and regulations under D.C. Code, sec. 25–107.

(216) Promulgating regulations under D.C. Code, sec. 25–111(c).

(217) Requiring by regulation that no licensee holding a retailer's license, Class A, B, C, D, or E shall transport any alcoholic beverage into the District of Columbia, permitting such importation under a special permit or permits, prescribing the terms, conditions, and manner of issuance of such permit or permits, and suspending, amending, revoking, or abolishing any such regulations, permit, or system of permits under D.C. Code, sec. 25–112.

(218) Promulgating regulations to permit owners of warehouse receipts to withdraw bonded liquors under D.C. Code, sec. 25–115(c).

(219) Suspending or revoking in whole or in part the requirements of D.C. Code, sec. 25–123, under D.C. Code, sec. 25–123(c).

(220) Prescribing by regulation methods or devices or both for the assessment, evidencing of payment, and collection of taxes under D.C. Code, sec. 25–124(c)(3).

(221) Requiring that the immediate container of each beverage contain the license number of each licensee who sells or offers for sale such beverages under D.C. Code, sec. 25–124(g).

(222) Prescribing the manner of collection and payment of tax on beer under D.C. Code, sec. 25–138.

16. Charters of incorporation; money lending

(223) Granting or refusing a charter of incorporation under D.C. Code, sec. 26–305.

(224) Making rules and regulations for the conduct of business of making loans, and for the enforcement of the Act of February 4, 1913, under D.C. Code, sec. 26–611.

17. Tissue banks; crematorium

(225) By regulations, authorizing tissue banks and others to remove, transport, and dispose of tissue from dead bodies of human beings without permit under D.C. Code, sec. 27–119a.

(226) Making rules for the proper maintenance and operation of a public crematorium under D.C. Code, sec. 27–130.

18. Standard time

(227) Advancing the standard time applicable to the District of Columbia under D.C. Code, secs. 28–2711 and 28–2804.

19. Corporations

(228) Approving newspapers in which persons may give notice of intention to present to Congress bills for incorporation or for alteration or extension of corporation charters under D.C. Code, sec. 29–102.

(229) Fixing fees relating to process under D.C. Code, sec. 29–933(e)(2).

(230) Making rules and regulations relating to service of process under D.C. Code, sec. 29–933(e)(5).

(231) Providing an official seal under D.C. Code, sec. 29–935(c).

(232) Making and modifying regulations to carry out the Act of June 8, 1954, and prescribing penalties for the violation of any such regulations, under D.C. Code, sec. 29–935(f).

(233) Determining fee which shall be charged for furnishing a certificate as to the status of a corporation or as to the existence or nonexistence of facts relating to corporations under D.C. Code, sec. 29–936(b)(21).

(234) Making regulations providing for fees for services under D.C. Code, sec. 29–1092(s).

(235) Making and modifying regulations to carry out the provisions of the Act of August 6, 1962, and prescribing penalties for the violation of any such regulation, under D.C. Code, sec. 29–1093(e).

20. Education

(236) Approving amounts fixed by the Board of Education to be paid for non-residents to cover the expense of tuition and costs of textbooks and school supplies under D.C. Code, sec. 31–307(b).

(237) Approving regulations made by the Board of Education to carry out the intent and purposes of the Act of September 8, 1960 under D.C. Code, sec. 31–308(a).

(238) Making rules and regulations for the purpose of carrying into full force and effect the provisions of the Act of January 15, 1920 under D.C. Code, sec. 31–717.

(239) Prescribing regulations regarding the deposit of additional sums by any teacher, and prescribing table of mortality, under D.C. Code, sec. 31–721.

(240) Making rules and regulations for the purpose of carrying the provisions of the Act of August 7, 1946 into full force and effect under D.C. Code, sec. 31–736.

(241) Making regulations concerning (i) the form of application by officers of any medical or dental college for registration and a permit to commence or continue business, (ii) the evidence to be adduced in support thereof, and (iii) the method of taking such evidence, giving notice of hearings upon applications, holding hearings, and making inquiries under D.C. Code, sec. 31–902.

(242) Closing streets and alleys under D.C. Code, sec. 31–1108.

(243) Promulgating rules and regulations governing the manner in which the District duties relating to surplus property shall be carried out, including the fixing of fees to be charged for services, under D.C. Code, sec. 31–1302.

(244) All functions vested in the Board of Commissioners of the District of Columbia by D.C. Code, sec. 31–1522(b).

21. Institutions, agencies, and services

(245) Promulgating regulations to govern the establishment and maintenance of private hospitals and asylums, and regulating the issuance, suspension, and revocation of licenses, under D.C. Code, sec. 32–304.

(246) Making rules and regulations under D.C. Code, sec. 32–306.

(247) Establishing rates and regulations respecting the admission of pay patients under D.C. Code, sec. 32–308.

(248) Establishing rates and regulations respecting the admission of pay patients under D.C. Code, sec. 32–309.

(249) Establishing rates and regulations respecting the admission of patients under D.C. Code, sec. 32–310.

(250) Establishing rates and regulations respecting the admission of pay patients under D.C. Code, sec. 32–313.

(251) Prescribing rates for furnishing clinical services, drugs, pharmaceutical preparations, or x-ray service, and determining the necessity of using appropriations without regard to the rates prescribed, under D.C. Code, sec. 32–322.

(252) Establishing standards of indigency for admission of patients to municipal hospitals, and establishing rates at which, and regulations under which, emergency and semi-indigent patients may be admitted to wards of Gallinger Municipal Hospital on a full- or part-time basis, under D.C. Code, sec. 32–326.

(253) Making rules and regulations for enforcing discipline, for imparting instruction or preserving health, and for the physical, intellectual, and moral training of the inmates of the institution for the custody, care, education, training, and treatment of feebleminded persons under D.C. Code, sec. 32–604.

(254) Approving rules and regulations, and approving amendments of rules and regulations prescribing standards of placement, care, and services to be required of child-placing agencies under D.C. Code, sec. 32–783.

(255) Making, altering, amending, and changing bylaws, rules, and regulations for the government of the National Training School for Girls, its officers, teachers, employees, and inmates, the employment, discipline, instruction, education, removal, and absolute, temporary, or conditional release of girls committed to the school under D.C. Code, sec. 32–904.

(256) Prescribing regulations respecting the sale of surplus products under D.C. Code, sec. 32–1009.

(257) Establishing rates and regulations respecting the care and treatment of any patients under D.C. Code, sec. 32–1010.

22. Food and drugs

(258) Preparing rules and regulations with regard to the proper method of collecting and examining drugs and articles of food, under D.C. Code, sec. 33–104.

(259) Making regulations to protect the milk, cream, and ice cream supply of the District of Columbia under D.C. Code, sec. 33–307.

(260) Prescribing regulations under which milk and cream shall be pasteurized under D.C. Code, sec. 33–315.

(261) By regulation, including places other than creameries or receiving stations under the provisions of section 17 of the Act of February 27, 1925 under D.C. Code, sec. 33–317 (second sentence).

(262) Making rules and regulations for the administration and enforcement of the Narcotic Drug Act of June 20, 1938 under D.C. Code, sec. 33–405.

(263) Making rules and regulations to carry out the purposes of the Act of July 3, 1943 under D.C. Code, sec. 33–502.

(264) After reasonable public notice and opportunity for a hearing, finding and declaring drugs or compounds, preparations, or mixtures thereof to be habit-forming, excessively stimulating, or to have a dangerously toxic, or hypnotic or somnifacient effect on the body of a human or animal under D.C. Code, sec. 33–701(1)(C).

(265) After reasonable public notice and opportunity for hearing, declaring by rule or regulation duly promulgated that a compound, mixture, or preparation of barbituric acid, its salts and derivatives to have or contain no habit-forming properties and not to have a dangerously toxic or hypnotic or somnifacient effect on the body of a human or animal under D.C. Code, sec. 33–703(1).

(266) After reasonable public notice and opportunity for hearing, finding and declaring by rule or regulation duly promulgated that a compound, mixture, or preparation of amphetamine, desoxyphedrine, phenolethylamine, or their salts or derivatives to contain in addition to such drug or its salts and derivatives some other drug or drugs causing it to possess other than an excessively stimulating effect upon the central nervous system and to have no habit-forming properties or dangerously toxic effect upon the body of a human or animal under D.C. Code, sec. 33–703(2).

(267) Promulgating regulations for the administration and enforcement of the Act of July 24, 1956 under D.C. Code, sec. 33–707.

23. Insurance

(268) Making rules and regulations to make the conduct of each company in the same line of insurance conform in doing business in the District under D.C. Code, sec. 35–102.

(269) Prescribing rules and regulations for the hearing of appeals (of health, accident, and life insurance companies) under D.C. Code, sec. 35–202.

(270) Requiring, under D.C. Code, sec. 35–407, that at least once in the month of March in each year a summary of the annual financial statement filed thereunder be published in a daily newspaper.

(271) Making and prescribing rules and regulations (subject to the approval of the court) under D.C. Code, sec. 35–419 (penultimate paragraph).

(272) Requiring information, in addition to that specified in the statute, to be included in applications filed for licensing as life insurance general agent, agent, or solicitor, under D.C. Code, sec. 35–425.

(273) Requiring information, in addition to that specified in the statute, to be included in applications for licensing as a life insurance broker under D.C. Code, sec. 35–428.

(274) Prescribing rules and regulations governing inspectors of elections held by policy holders of domestic stock life insurance companies for the purpose of converting to a mutual company under D.C. Code, sec. 35–519.

(275) Issuing rules and regulations to carry out the purposes of section 41 of the Act of June 19, 1934 under D.C. Code, sec. 35–541(f).

(276) Making rules and regulations concerning the procedure for the filing or submission of policies under D.C. Code, sec. 35–712–3–(f); and making rules and regulations concerning the provisions in supplemental contracts and the submission and approval of such contracts under D.C. Code, sec. 35–712 (last proviso).

(277) Making rules and regulations necessary in making effective the provisions of the Fire and Casualty Act of October 9, 1940 under D.C. Code, sec. 35–1304.

(278) Approving agreements and bylaws established by the rating bureau for its governance, approving rules and regulations adopted by the rating bureau to carry out its functions, and approving amendments to such agreements, bylaws, rules, and regulations under D.C. Code, sec. 35–1404.

(279) Making and promulgating (i) regulations governing the enforcement of the provisions of the Act of May 20, 1948 (providing for regulation of casualty and other insurance rates), (ii) regulations necessary in making that Act effective, and (iii) rules for making compilations of statistical data available to companies and rating organizations under D.C. Code, sec. 35–1508.

24. Labor

(280) Adopting and promulgating regulations defining terms under section 10 of the Act of February 24, 1914 (sec. 3, Public Law 89–684, approved October 15, 1966).

(281) Making and revising regulations, including definition of terms, under section 8 of title I of the Act of September 19, 1918 (Public Law 89–684, approved October 15, 1966).

(282) Prescribing by regulation records or information necessary or appropriate for the enforcement of the provisions of the Act of September 19, 1918, as amended by Public Law 89–684, approved October 15, 1966, or of the regulations or orders issued thereunder, under section 11 of that Act.

(283) (i) Determining and fixing standards of safety in employment, places of employment, in the use of devices and safeguards, and in the use of practices, means, methods, operations, and processes of employment, and (ii) promulgating general rules and regulations and fixing minimum safety requirements, under D.C. Code, sec. 36–433.

(284) Adopting and promulgating rules and regulations under D.C. Code, sec. 36–434.

(285) Promulgating regulations defining and delimiting the term "any person employed in a bona fide executive, administrative, or professional capacity" under D.C. Code, sec. 36–601(b).

25. Motor vehicles

(286) Providing by regulation for the issuance of (i) registration certificates and identification tags, (ii) duplicate registration certificates or duplicate identification tags and (iii) special use identification tags under D.C. Code, sec. 40–102(b); and promulgating thereunder the regulations referred to in paragraphs (1) and (4) thereof.

(287) Extending the effective period of registration of motor vehicles under D.C. Code, sec. 40–102(c).

(288) Prescribing regulations to carry out provisions of law respecting registration of, and identification tags for, motor vehicles and trailers, under D.C. Code, sec. 40–102(e).

(289) Prescribing rules and regulations respecting the revocation or suspension of dealers' registrations and dealers' identification tags, including return of such tags, under D.C. Code, sec. 40–102(f).

(290) Prescribing tags treated with special reflective materials and fixing the additional fee charged in connection therewith under D.C. Code, sec. 40–103(a).

(291) Determining the percentage of fees for registration of motor vehicles and trailers to be credited to the General Fund of the District of Columbia under D.C. Code, sec. 40–103(d).

(292) Prescribing regulations relating to the issuance of motor vehicle operators' permits and to extending the

validity of certain motor vehicle operators' permits under D.C. Code, secs. 40–301(a) (1) and (6).

(293) Prescribing by regulation matter to be stated on each motor vehicle operator's permit under D.C. Code, sec. 40–301(b).

(294) Making rules and regulations for the administration of the Motor Vehicle Safety Responsibility Act of the District of Columbia under D.C. Code, sec. 40–419.

(295) Making, modifying, and repealing rules and regulations under D.C. Code, sec. 40–603(a).

(296) Making and modifying regulations in respect to brakes, horns, lights, mufflers, and other equipment, the inspection of the same; the registering, reregistering, titling, retitling, transferring of titles, and revocation of the certificate of title to motor vehicles and trailers, under D.C. Code, sec. 40–603(c).

(297) Making, modifying, and repealing rules and regulations in respect to the movement of traffic, speed, length, weight, height, width, routing, and parking of vehicles, the establishment and location of hack stands, and the establishment and location of parking areas for use of Members of Congress and Government officials, under D.C. Code, sec. 40–603(e).

(298) Making regulations with respect to the control of traffic under D.C. Code, sec. 40–603(f).

(299) Prescribing penalties under D.C. Code, sec. 40–603(g).

(300) Designating and reserving parking spaces for the use of Members of the Congress under D.C. Code, sec. 40–604 (40 U.S.C. 60a).

(301) Permitting parking of motor vehicles in the Municipal Center, selecting officers and employees whose vehicles may be parked there, and making regulations for the control of the parking of such vehicles, including authority to prescribe fees and charges for the privilege of parking of such vehicles, under D.C. Code, sec. 40–604a(a).

(302) Permitting the public to park motor vehicles in a portion or portions of the Municipal Center, setting aside the portion or portions of that Center for such purpose, making regulations for the control of parking in the portion or portions so set aside (including the authority to restrict the privilege of parking therein to persons having business in the Municipal Center), making regulations to prohibit parking in all portions of the Municipal Center not set apart for such purposes, and prescribing fees and charges for the privilege of parking motor vehicles, under D.C. Code, sec. 40–604a(b).

(303) Prescribing penalties under D.C. Code, sec. 40–604a(c).

(304) Making rules and regulations for the control of the parking of vehicles, and prescribing fees for the privilege of parking vehicles under D.C. Code, sec. 40–616.

(305) Making regulations necessary in the furtherance of the purposes of D.C. Code, sec. 40–617 under the last sentence thereof.

(306) Establishing and revising uniform schedules of rates to be charged for use of space in each parking facility, providing rate differentials, prescribing and promulgating rules and regulations for the carrying out of the provisions of the District of Columbia Motor Vehicle Parking Facility Act of 1942, determining the time within which the cost of acquiring and improving the property shall be liquidated, and providing for the acquisition and improvement of other necessary parking facilities under D.C. Code, sec. 40–804(d).

(307) Making rules and regulations for the control of parking of vehicles, and prescribing fees for the parking of vehicles, under D.C. Code, sec. 40–804(e).

(308) Fixing the amount of collateral to be deposited under D.C. Code, sec. 40–810.

(309) Including fees within the definition of the term "Governmental charges" under D.C. Code, sec. 40–901(4).

(310) By regulation or order, determining, fixing, redetermining, and refixing, maximum finance charges under D.C. Code, sec. 40–902(d).

(311) Making regulations to carry out the purposes of section 2 of the Act of April 22, 1960 under D.C. Code, sec. 40–902(e)(1).

(312) Making additional regulations under D.C. Code, sec. 40–902(e)(2).

(313) Making classifications under D.C. Code, sec. 40–902(e)(3).

(314) By regulation, (i) prohibiting the inclusion of certain provisions in any retail installment contract, and (ii) providing that waivers or purported waivers shall be void and of no effect, under D.C. Code, sec. 40–902(f).

(315) Prescribing by regulation security required of licensed persons, establishing classes and subclasses of persons, specifying the amount and conditions of the bond to be deposited by each of the members of any such class or subclasses, and by regulation requiring applicants for licenses (i) to furnish and keep in force a bond or other security, (ii) to procure and keep in force public liability insurance and property damage insurance, or both, and (iii) to appoint an attorney for the service of process and notices under D.C. Code, sec. 40–903(a).

(316) Promulgating regulations to carry out the purposes of Act regulating retail installment sales of motor vehicles under D.C. Code, sec. 40–905.

26. Public utilities

(317) Fixing regulations under which electric light companies may be authorized to construct, use, and extend conduits, and prescribing regulations under which electric lighting companies may extend underground conduits and wires, under D.C. Code, sec. 43–1101.

(318) Prescribing conditions and regulations to permit the erection of poles and the stringing of overhead wires thereon under D.C. Code, sec. 43–1105.

(319) Making regulations concerning granting of permits for repair, enlargement, and extension of electric-lighting conduits under D.C. Code, sec. 43–1106.

(320) Making regulations concerning granting of permits for repair, enlargement, and extension of electric-lighting conduits under D.C. Code, sec. 43–1107.

(321) Prescribing regulations under D.C. Code, sec. 43–1406.

(322) Prescribing regulations under D.C. Code, sec. 43–1414.

(323) Making regulations for the proper distribution of water under D.C. Code, sec. 43–1503.

(324) Determining the frequency of levying and collecting water rates under D.C. Code, sec. 43–1504.

(325) Fixing the rates charged for water and water services under D.C. Code, sec. 43–1520c.

(326) Establishing charges for the provision of sanitary sewer service under D.C. Code, secs. 43–1605 and 43–1606.

(327) Promulgating regulations to effectuate purposes of Title II of the Act of May 18, 1954 under D.C. Code, sec. 43–1608.

(328) Imposing additional charge for unpaid sanitary sewer service charge under D.C. Code, sec. 43–1609.

(329) Making rules and regulations to carry out provisions of Public Works Act of 1954 under D.C. Code, sec. 43–1618.

(330) Prescribing regulations respecting the operation and maintenance of the Potomac Interceptor under D.C. Code, sec. 43–1621(a).

27. Passenger motor vehicles for hire

(331) Approving form of, and terms and conditions of filing, evidence under D.C. Code, sec. 44–301.

(332) Making rules and regulations governing the writing of insurance, the making of bonds, and the business of insuring or bonding risks under D.C. Code, sec. 44–302.

28. Real property

(333) Prescribing by regulation extensions of time under D.C. Code, sec. 45–723(d)(1).

(334) Prescribing by regulation methods or devices, or both, for the evidencing of payment and the collection of taxes under D.C. Code, sec. 45–736.

(335) Prescribing rules and regulations to carry out the purposes of subchapter II of chapter 7 of title 45 of the D.C. Code, under D.C. Code, sec. 45–737.

(336) Adopting a seal and prescribing the design engraved thereon, and making, revising, or repealing regulations to carry out the provisions of chapter 14 of title 45 of the D.C. Code, under D.C. Code, sec. 45–1403.

(337) Requiring proof of the honesty, truthfulness, and integrity of the applicant under D.C. Code, sec. 45–1405.

29. Social security

(338) Prescribing regulations for estimating and determining the reasonable cash value of remuneration in any

medium other than cash and for estimating and determining the reasonable amount of gratuities under D.C. Code, sec. 46–301(c).

(339) Prescribing by regulation the period of time as equivalent to a calendar quarter under D.C. Code, sec. 46–301(k).

(340) Prescribing the period of time to be used for the term "month" under D.C. Code, sec. 46–301(n).

(341) Prescribing by regulation the period of seven consecutive days to be used as a "week" under D.C. Code, sec. 46–301(o).

(342) Prescribing regulations specifying time within which employers shall make a return of, and pay contributions accrued with respect to, wages paid during preceding calendar quarter with respect to employment, under D.C. Code, sec. 46–304(b).

(343) Prescribing regulations respecting issuance of certificate of release of lien for taxes under D.C. Code, sec. 46–304(e).

(344) Prescribing the extent to which rulings, regulations, or decisions shall be applied without retroactive effect under D.C. Code, sec. 46–304(k).

(345) Prescribing regulations regarding reduction of benefits under D.C. Code, sec. 46–307(c).

(346) Prescribing regulations regarding the making of claims for benefits under D.C. Code, sec. 46–309(a).

(347) Prescribing regulations specifying the frequency and manner of registration and inquiries for work, and by regulation waiving or altering requirements for benefits, under D.C. Code, sec. 46–309(d).

(348) Prescribing regulations governing determinations as to what constitutes leaving work voluntarily without good cause under D.C. Code, sec. 46–310(a).

(349) Prescribing regulations under D.C. Code, sec. 46–310(c).

(350) Prescribing regulations under D.C. Code, sec. 46–310(e).

(351) Prescribing regulations under D.C. Code, sec. 46–311(a).

(352) Prescribing regulations under D.C. Code, sec. 46–311(c).

(353) Prescribing regulations under D.C. Code, sec. 46–311(e).

(354) Fixing rate of fees allowed witnesses under D.C. Code, sec. 46–311(g).

(355) Requiring bonds of employees under D.C. Code, sec. 46–313(a).

(356) Making regulations to carry out the provisions of chapter 3 of title 46 of the D.C. Code under D.C. Code, sec. 46–313(b).

(357) By regulations prescribing restrictions, subject to which information may be made available, under D.C. Code, sec. 46–313(f).

(358) Entering into reciprocal arrangements under D.C. Code, sec. 46–316(a).

(359) Prescribing work records to be kept, under D.C. Code, sec. 46–317(a).

30. Taxation and fiscal affairs

(360) Fixing amounts of bonds under D.C. Code, secs. 47–113c and 47–120a.

(361) Requiring the giving of bond under D.C. Code, sec. 47–122.

(362) Requiring the giving of bond under D.C. Code, sec. 47–303.

(363) Ascertaining, determining, and fixing annually rate of taxation under D.C. Code, sec. 47–501.

(364) Determining whether any money raised in any fiscal year in excess of the needs for that year shall be available in the succeeding year for the purpose of meeting expenses or for enabling the fixing of a lower rate of taxation for the year following, or both, under D.C. Code, sec. 47–503.

(365) Reporting annually to the Congress the use being made of property specifically exempted from taxation, and any changes in such use, with recommendations, under D.C. Code, sec. 47–801a(e).

(366) Making and promulgating rules and regulations to carry out the intent and purposes of the Act of December 24, 1942 under D.C. Code, sec. 47–801f.

(367) Fixing date of sale of real property on which taxes are levied and in arrears under D.C. Code, sec. 47–1001.

(368) Requiring by regulation the times and manner of reporting income and the information to be reported under D.C. Code, sec. 47–1577a(b)(17) (last paragraph) (Public Law 89–591).

(369) Promulgating rules and regulations permitting as a deduction from gross income allowances for depletion of natural resources under D.C. Code, sec. 47–1557b(a)(7).

(370) Including in regulations tax table for elective use in connection with paying the tax under D.C. Code, sec. 47–1567b(b).

(371) Prescribing regulation or regulations for determining under formula or formulas provided therein the portion of net income subject to tax under the District of Columbia Income and Franchise Tax Act of 1947 under D.C. Code, sec. 47–1580a.

(372) Prescribing and promulgating all regulations referred to in D.C. Code, sec. 47–1586g.

(373) Prescribing and publishing rules and regulations for the enforcement of the District of Columbia Income and Franchise Tax Act of 1947 under D.C. Code, sec. 47–1595.

(374) Making rules and regulations to carry out the provisions of the District of Columbia Revenue Act of 1956 under D.C. Code, sec. 47–1595a.

(375) Making rules and regulations for enforcement of law imposing inheritance and estate taxes and providing for granting extensions of time under D.C. Code, sec. 47–1618.

(376) Prescribing regulations relating to issuing certificate releasing property from lien under D.C. Code, sec. 47–1623.

(377) Entering into a compact and issuing rules and regulations for the implementation of such compact under section 103 of Public Law 89–11, approved April 14, 1965 (79 Stat. 60).

(378) Entering into an agreement, issuing rules and regulations for the implementation of such agreement, making exemptions from the coverage of the agreement, making changes in methods of reporting, and giving notice of withdrawal from the agreement, under sections 202, 203, and 205 of Public Law 89–11, approved April 14, 1965 (79 Stat. 65, 66).

(379) Promulgating regulations requiring information to be contained in applications under D.C. Code, sec. 47–1903(a)(5).

(380) Making regulations for the administration of the Act of April 23, 1924 (imposing tax on motor-vehicle fuels), and affixing thereto fines and penalties, under D.C. Code, sec. 47–1916.

(381) Determining penal sum of bond to be deposited by applicants for licenses under D.C. Code, sec. 47–2102.

(382) Adopting seal under D.C. Code, sec. 47–2301.

(383) Prescribing regulations for the public decency under D.C. Code, sec. 47–2303.

(384) Classifying buildings, and requiring licenses, under D.C. Code, sec. 47–2328.

(385) Directing as to the identification tags to be borne by licensed vehicles under D.C. Code, sec. 47–2331(f).

(386) Making and modifying regulations governing the conduct of licensed vendors under D.C. Code, sec. 47–2336.

(387) Making regulations for the examination of applicants for licenses under D.C. Code, sec. 47–2338.

(388) Classifying dealers in secondhand personal property under D.C. Code, sec. 47–2339.

(389) Making and promulgating regulations under D.C. Code, sec. 47–2340.

(390) Making regulations for the government and conduct of the business of licensed private detectives under D.C. Code, sec. 47–2341(d).

(391) Requiring a license of businesses or callings other than those specified in the Act and modifying any provision of the Act, under D.C. Code, sec. 47–2344.

(392) Prescribing additional subjects in which applicants for license as undertaker shall be examined under D.C. Code, sec. 47–2344a(b).

(393) Promulgating and altering rules and regulations under D.C. Code, sec. 47–2344a(d)(6).

(394) Making regulations under D.C. Code, sec. 47–2345(a).

(395) Providing by regulation that any inspection shall be made either prior or subsequent to the issuance of a license under D.C. Code, sec. 47–2345(b).

(396) Requiring that a class or subclasses of licensees give bond, and fixing the amount of such bond, under D.C. Code, sec. 47–2345(c).

(397) Making rules and regulations to carry out the provisions of the District of Columbia Revenue Act of 1937, and prescribing and publishing rules and regulations for the enforcement of the Revenue Act of 1939, under D.C. Code, sec. 47–2502.

(398) Prescribing amounts to be added to sales prices and collected from purchasers under D.C. Code, sec. 47–2604(a).

(399) Prescribing regulations governing refunds to vendors of amounts repaid to purchasers under D.C. Code, sec. 47–2617(a).

(400) Making, adopting, and amending regulations under D.C. Code, sec. 47–2620.

(401) Prescribing methods for determining the gross proceeds from sales made or services rendered and for the allocation of such sales and services into taxable and nontaxable sales under D.C. Code, sec. 47–2621(c).

(402) Requiring vendors to keep detailed records, and to furnish information, under D.C. Code, sec. 47–2621(d).

(403) Requiring vendors to file bond, determining the sureties necessary, and the duration of the bond under D.C. Code, sec. 47–2708.

(404) Requiring purchasers to include in monthly returns (relating to compensating-use tax) information necessary for the computation and collection of the tax under D.C. Code, sec. 47–2711(a).

(405) Requiring returns of purchasers to be made for periods and upon dates other than those specified in the Act, and specifying such periods and dates, under D.C. Code, sec. 47–2711(b).

(406) By regulation, including wrapper within the definition of "original package" under D.C. Code, sec. 47–2801(g).

(407) By regulation, permitting tax stamps to be affixed other than to original packages, and approving regulations prescribing the manner of cancellation of stamps, under D.C. Code, sec. 47–2802(c).

(408) Prescribing stamps denoting payment of tax, under D.C. Code, sec. 47–2802(d).

(409) By regulation permitting licensees to pay tax by imprinting impressions upon original packages by the use of metering devices under D.C. Code, sec. 47–2802(h).

(410) By regulation, prescribing terms and conditions for allowing discount from the face value of tax stamps under D.C. Code, sec. 47–2802(i).

(411) Approving regulations permitting cigarettes to be sold in number less than the number contained in the original package, and fixing fee for retailer's license, under D.C. Code, sec. 47–2805(A).

(412) By regulation, requiring that a separate license be obtained for each vending machine or permitting a blanket license for one or more machines, prescribing that evidence of licensing of machines be attached to each machine by means of markers, stickers, or otherwise, and fixing the annual fee for licenses, under D.C. Code, sec. 47–2805(B).

(413) By regulation, authorizing the issuance of a license for a place outside the District of Columbia and authorizing the terms and conditions therefor, and fixing the annual fee for license, under D.C. Code, sec. 47–2805(C)(3).

(414) Fixing by regulation periods for which licenses shall remain in effect, under D.C. Code, sec. 47–2806.

(415) Making rules and regulations to carry out the provisions of chapter 28 of title 47 of the D.C. Code, under D.C. Code, sec. 47–2808.

(416) Prescribing regulations respecting refunds or allowances as credit on purchase of new tax stamps under D.C. Code, sec. 47–2811(a).

(417) Promulgating regulations to carry out the purposes of the Act of September 1, 1959 under D.C. Code, sec. 47–3009.

31. Miscellaneous

(418) Promulgating rules and regulations with respect to the solicitation and voting of proxies, consents, and authorizations under section 2(a) of the Act of April 18, 1966 (Public Law 89–402; 80 Stat. 123).

(419) By rules and regulations, exempting a transaction or transactions, under section 3(b) (last sentence) of the Act of April 18, 1966 (Public Law 89–402; 80 Stat. 124).

(420) By rules and regulations, defining and prescribing terms and conditions under section 3(d) (last sentence) of the Act of April 18, 1966 (Public Law 89–402; 80 Stat. 124).

(421) Adopting, prescribing, and making the rules and regulations referred to in sections 3(e), 3(f), and 3(h) of the Act of April 18, 1966 (Public Law 89–402; 80 Stat. 124; 125).

(422) Making regulations to secure the preservation of public order and protection of life, health, and property, making special regulations respecting the standing, movement, and operation of vehicles, and fixing fees for special licenses, under the first section of the Act of July 19, 1966 (Public Law 89–514; 80 Stat. 320).

(423) Adopting rules and regulations to carry out the purposes of the District of Columbia Certified Public Accountancy Act of 1966 (Public Law 89–578, approved September 16, 1966), under section 5 of that Act (80 Stat. 787).

(424) Making rules and regulations to carry out the District of Columbia Revenue Act of 1966 (Public Law 89–610, approved September 30, 1966) under section 1005 of that Act (80 Stat. 859).

(425) Appointing two directors of the Washington Metropolitan Area Transit Authority (80 Stat. 1326). Those directors shall be appointed from among a group of individuals consisting of the following: (1) The members of the District of Columbia Council, (2) the Commissioner of the District of Columbia, and (3) the Assistant to the Commissioner of the District of Columbia (provided for in section 302 of this reorganization plan).

(426) Promulgating rules and regulations for the administration of the work release program under Section 5 of the District of Columbia Work Release Act (Public Law 89–803; 80 Stat. 1519).

(427) [1] Fixing stipends of student employees under 5 U.S.C. 5352.

(428) [1] Fixing value of accommodations to be deducted from stipends under 5 U.S.C. 5353.

(429) [1] Prescribing and issuing, or providing for the formulation and issuance of, regulations under 5 U.S.C. 5527(b).

(430) Prescribing regulations for the destruction of animals or live poultry affected with contagious, infectious, or communicable disease, and for the proper disposition of their hides and carcasses, and prescribing regulations for disinfection and other regulations, under section 8 of the Act of May 29, 1884, c. 60, 25 Stat. 33, as amended (21 U.S.C. 130).

(431) Agreeing to the closing and vacating of alleys and portions of streets under section 8(b) of the Public Buildings Act of 1959, P.L. 86–249, 73 Stat. 481, as amended (40 U.S.C. 607(b)).

(432) The functions under Title VI of the Act of October 14, 1940, c. 862, as amended (42 U.S.C. 1581–1590) which are now vested in the Board of Commissioners of the District of Columbia pursuant to the provisions of section 610 of that Act, as amended (42 U.S.C. 1590).

SEC. 403. *Budget.* Functions with respect to requests for regular, supplemental, or deficiency appropriations for the District of Columbia (made in pursuance of section 214 of the Budget and Accounting Act, 1921, as amended (31 U.S.C. 22) or in pursuance of any other provision of law) are hereby transferred so as to accord with the following:

(a) The Commissioner of the District of Columbia shall prepare such requests and submit them to the District of Columbia Council.

(b) If the Council approves the requests so submitted, without revision, it shall return them to the Commissioner and the Commissioner shall submit them to the Bureau of the Budget.

(c) If the Council revises the requests so submitted to the Council, it shall return them, with the revisions, to the Commissioner. If the Commissioner concurs in the revisions he shall submit the revised requests to the Bureau of the Budget.

(d) If the Commissioner does not concur in any one or more of the revisions proposed by the Council he shall return the requests, together with the Council's revisions,

See footnote at end.

to the Council and append a statement of the reasons for not concurring. If the Council, by a three-fourths vote of its members present and voting insists upon any one or more of its original revisions, it shall return the requests and the revisions upon which it insists to the Commissioner within five days and so inform him, and he shall submit the requests, incorporating the revisions upon which the Council insists, to the Bureau of the Budget. If such a three-fourths vote does not prevail or the Council does not act on the requests, the Council shall return the requests to the Commissioner and he shall submit them (without the revisions) to the Bureau of the Budget.

(e) If the Council does not approve or revise the requests within thirty days next following their receipt, the requests shall be deemed to be approved by the Council.

(f) The authority of the Commissioner under section 305 of this reorganization plan (to delegate functions) shall not extend to his functions under this section of concurring or not concurring in revisions of requests proposed by the Council.

SEC. 404. *Zoning Commission.* Functions of the members of the Board of Commissioners of the District of Columbia with respect to serving as members of the Zoning Commission (D.C. Code, sec. 5–412) are hereby transferred as follows:

(a) Those of the President of the Board of Commissioners are transferred to the Chairman of the District of Columbia Council.

(b) Those of the Engineer Commissioner are transferred to the Commissioner of the District of Columbia.

(c) Those of the other member of the Board of Commissioners are transferred to the Vice Chairman of the Council.

SEC. 405. *Officers of the Corporation.* The functions of the Commissioners of the District of Columbia with respect to being officers of the Corporation under D.C. Code, sec. 1–103 are hereby transferred to the members of the District of Columbia Council and to the Commissioner of the District of Columbia in such manner as to accord with the transfers of functions to the Council and the Commissioner, respectively, as effected by the provisions of the foregoing sections of Part IV of this reorganization plan.

SEC. 406. *Approval or disapproval by Commissioner.* (a) Each and every action taken by the Council in pursuance of authority transferred to it by the provisions of this reorganization plan in respect of rules or regulations (exclusive of rules and regulations respecting the internal organization or functioning of the Council or the appointment or direction of personnel employed by the Council) or in respect of penalties or taxes shall be promptly presented to the Commissioner of the District of Columbia (provided for in Part III of this reorganization plan) for his approval or disapproval.

(b) If the Commissioner approves an action of the Council presented to him under subsection (a) of this section, that action shall become effective immediately or at such later time as may be specified in the action of the Council.

(c) If the Commissioner neither approves nor disapproves an action of the Council before the expiration of the first period of ten calendar days following the date on which the action is presented to him by the Council, the action of the Council shall become effective without the approval of the Commissioner upon the expiration of the ten-day period or at such later time as may be specified in the action of the Council.

(d) Where the Commissioner disapproves an action of the Council before the expiration of the first period of ten calendar days following the date on which the action is presented to him by the Council he shall return the action to the Council before such expiration together with a statement of the reasons for his disapproval. No action so returned shall become effective, except that such an action shall become effective if the Council re-adopts the action by a three-fourths vote of the Council members present and voting within thirty days next following the return of the action to the Council. Any action which becomes effective under this subsection shall be effective upon the re-adoption thereof by the Council or upon such later date as may be specified in the action of the Council.

(e) The authority of the Commissioner under section 305 of this reorganization plan (to delegate functions) shall not extend to his functions under the foregoing subsections of section 406.

PART V. MISCELLANEOUS PROVISIONS

SEC. 501. *Status of certain agencies.* (a) Functions now vested in any agency listed in subsection (b) of this section, or in any officer or body of or under such agency, shall remain so vested; but all functions of the Board of Commissioners of the District of Columbia, and all functions of the President of that Board or of any other member of the Board, relating to the listed agency or its functions or to an officer or body thereof or to the functions of such officer or body shall be deemed to be transferred by Part IV of this reorganization plan.

(b) The following agencies of the Corporation are the agencies referred to in subsection (a) of this section:

(1) Board of Education (including the public school system)
(2) Board of Library Trustees (including the public libraries)
(3) Recreation Board
(4) Public Service Commission
(5) Zoning Commission
(6) Zoning Advisory Council
(7) Board of Zoning Adjustment
(8) Office of the Recorder of Deeds
(9) Armory Board

SEC. 502. *Incidental transfers.* (a) The personnel, property, records, and unexpended balances of appropriations, allocations and other funds employed, used, held, available, or to be made available in connection with the offices of the Board of Commissioners of the District of Columbia or in connection with the offices of the commissioners composing that Board shall be transferred as follows at such time or times as the Director of the Bureau of the Budget shall direct:

(1) So much thereof as the Director of the Bureau of the Budget shall determine to relate primarily to functions transferred to the District of Columbia Council by the provisions of this reorganization plan shall be transferred to that Council.

(2) All other thereof shall be transferred to the Commissioner of the District of Columbia.

(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers referred to in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

(c) Unless and until other provision is made in pursuance of section 304 of this reorganization plan or by law, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds which are now under the jurisdiction of the Board of Commissioners of the District of Columbia and are not affected by the provisions of subsection (a) of this section shall continue to be attached to or available for the several agencies of the Corporation.

SEC. 503. *Abolitions.* (a) Without prejudice to the continuation of the Corporation, there is hereby abolished the Board of Commissioners of the District of Columbia.

(b) The abolition effected by subsection (a) of this section includes the abolition of the office held by an officer of the Corps of Engineers of the United States Army as the Engineer Commissioner of the District of Columbia (10 U.S.C. 3534(a); D.C. Code, sec. 1–201) and the two other offices of Commissioner of the District of Columbia, but nothing in this reorganization plan shall preclude the detail by the President of not more than three officers assigned to the Corps of Engineers to assist the Commissioner of the District of Columbia in discharging his duties (10 U.S.C. 3534(b); D.C. Code, sec. 1–212).

(c) The joint board authorized and created by section 6(e) of the Act of March 3, 1925, 43 Stat. 1121, as amended (D.C. Code, sec. 40–603(e)), together with its functions, is hereby abolished.

(d) The Commissioner of the District of Columbia shall make such provisions as he may deem necessary with respect to winding up the affairs of (1) the Board

of Commissioners of the District of Columbia, and (2) the joint board on traffic.

SEC. 504. *Effective dates.* (a) Except as otherwise provided in subsection (b) of this section, the provisions of this reorganization plan shall take effect on the date determined under section 906(a) of title 5 of the United States Code.

(b) Part IV and sections 501, 502, and 503 of this reorganization plan shall take effect when for the first time there are in office under this reorganization plan both (1) the Commissioner provided for in Part III hereof, and (2) not less than six members of the Council provided for in Part II hereof or on such later date as may be specified by the President of the United States.

[1] Section 7(b), act Oct. 22, 1968. Pub. L. 90–623, pr(vided: "Paragraphs (115), (427), (428) and (429) of section 402 of Reorganization Plan No. 3 of 1967 have no further effect." The effect of those paragraphs are reflected in the amendments of sections 5352, 5353, 5527(b) and 6324(b)(1) of title 5, U.S. Code, made by section 1 of the above described Public Law.

LETTER OF TRANSMITTAL

To the Congress of the United States:

I am transmitting Reorganization Plan No. 3 of 1967 to provide a better government for the citizens of the Nation's Capital.

The explosive growth of the District of Columbia challenges the city on every front—from schools and hospitals, courts and police, to housing and transportation, recreation and job opportunities. If the District is to meet these tests and fulfill the needs of its citizens, it must, as I said in my message on the National Capital, "have the most responsive and efficient government we are capable of providing."

The plan I submit today is more than a matter of routine reorganization. Its vital purpose is to bring Twentieth Century government to the Capital of this Nation: to strengthen and modernize the government of the District of Columbia; to make it as efficient and effective as possible.

The present form of District government was designed almost a century ago for a community of 150,000 people. The District government then employed less than 500 persons and administered a budget of less than four million dollars.

Today Washington has a population of 800,000. It is the center of the countrv's fastest growing metropolitan area with a population of 2.5 million. The District's Government now employs some 30,000 people and the proposed 1968 budget is more than half a billion dollars.

The machinery designed more than 90 vears ago to govern a small community is now obsolete. The commission form of government—unorthodox when the Congress accepted it as a temporary measure in 1874—provides neither effective nor efficient government for the Nation's Capital. That form of government has long since been abandoned by the few cities which adopted it around the turn of the century. Today none of the Nation's 27 largest cities and only two of the country's 47 cities with populations exceeding 300,000 have a government of divided authority.

The District of Columbia is governed by three Commissioners. Each Commissioner is the chief executive—the mayor—but for only a part of the government. Yet, the problems of the District of Columbia, like those of any major city, cannot be neatly broken into three parts. Any effort to control crime, for example, cuts across virtually every function of government—from police and corrections to housing, education, health and employment. An effective attack on the problem requires action by two or more Commissioners and the Departments for which they are separately responsible—a time-consuming and often costly process.

The District has been fortunate in the caliber and dedication of the men who have served as Commissioners, but it can no longer afford divided executive authority. Its government must be able to respond promptly and effectively to new demands and new conditions. This requires clear-cut executive authority and flexible government machinery—not divided authority which too often results in prolonged negotiations and inaction.

The problem of divided executive authority in the District is aggravated by the additional non-executive responsibilities now borne by the Commissioners. As a member of the Board of Commissioners, each must now make rules and regulations on matters with which he is not otherwise concerned as an executive. Some of these quasi-legislative responsibilities—such as police regulations and property taxation—are of great importance to the city. Many—such as the naming of streets and the labeling of potato packages—are merely time-consuming. None should require a substantial portion of the time of the chief executive of a major city.

The reorganization plan I propose would remedy these deficiencies in the present form of government. It would:

—Unify executive and administrative authority.

—Eliminate competing and sometimes conflicting assignments of responsibility.

—Provide for the informed exercise of quasi-legislative functions through a Council which would be bipartisan and representative of the community.

—Permit the single Commissioner to organize the District government to provide effective day-to-day administration.

Under the plan, subject to Senate confirmation, the President would appoint a single Commissioner as chief executive and a bipartisan Council of nine members. The Commissioner would serve a four-year term, corresponding to that of the President. Council members would serve three-year terms, with three members to be appointed each year. The staggered terms would insure continuity of experience on the Council.

The plan would abolish the present Board of Commissioners of the District of Columbia. Its powers and responsibilities would be apportioned between the single Commissioner and the Council.

The Commissioner would be assigned the executive functions now vested in the Board of Commissioners. He would be given responsibility and authority to organize and manage the District government, to administer its programs and to prepare its budget. The plan also provides for an Assistant to the Commissioner to help him carry out these responsibilities.

The Council would be assigned the quasi-legislative functions now performed by the Board of Commissioners. The plan describes more than 430 functions which would be transferred to the Council. These include major responsibilities such as the approval of boundaries and plans for urban renewal, establishment of rules governing the licensing of professions, and setting of rates for property taxation. The Council would also be empowered to review and revise the Commissioner's budget before submission to the President.

Since the plan was announced in my Message on the Nation's Capital, we have been working to strengthen the Office of Commissioner and the Council. Out of this process of refinement four key changes have emerged, and have been incorporated into the plan.

First, the plan would authorize the Commissioner to veto actions of the Council with which he disagrees. The Council, in turn, could override such a veto by a three-fourths vote of its members. This provides due recognition for the responsibilities of the chief executive, while at the same time preserving the right of the Council to act on matters of overriding importance.

Second, the terms of Council members would be set at three years instead of two. The reduction in turnover and increase in experience would add strength to the Council.

Third, the salaries of the Chairman, Vice Chairman and Council members would be increased to reflect their important responsibilities.

Finally, the plan recognizes that the machinery of the District's government, no matter how modern, cannot realize its highest purpose unless it is infused with the most experienced, informed and able leadership.

The 800,000 citizens of the District of Columbia deserve nothing less than such leadership, not only as a matter of fundamental right but because the District occupies a special and central role in the affairs of the Nation.

The best talent available must be found for the key posts of Commissioner and Assistant to the Commissioner. The Commissioner is the chief executive of the District

of Columbia. The Assistant to the Commissioner will be his chief aide, his deputy, and will perform such duties as the Commissioner may prescribe.

In the search for leadership necessary in these crucial posts, the President and the Congress must balance the need to draw from the best talent in the Nation with the need for local experience and local involvement that are such valuable assets to enlightened municipal government. The plan therefore provides for the Presidential appointment of both these men, subject to Senate confirmation, with the requirement that at least one of them be a resident of the District for three years prior to appointment.

We would be indifferent to the cause of good government if the search and selection of the Commissioner and his Assistant were confined only to those who reside within the geographic boundaries of the District. This plan does not take that course. It provides a wide range of choice—opening the field not only to those who reside in the District, but to those who live in other parts of the Nation. At the same time, the plan assures that local experience will be well represented in the highest councils of the District Government.

Not only must either of the top executives positions be filled with a District resident, but each member of the nine-man Council must have been a resident of the District for at least three years prior to appointment.

Moreover, in selecting the Commissioner, I will look first to the residents of the District and I hope that he can be found here.

Of all the benefits of the plan, one stands out in particular—the strong leadership it provides as the cornerstone of support for any effective attack against crime. With that leadership and with the continued commitment and devotion of its police, the District can move with a greater sense of sureness and purpose against the spectre of crime that haunts the streets and shops of the Nation's Capital.

Of all the duties of the new single Commissioner none will be more important than his leadership in a renewed community effort to stem the rising tide of crime in the District.

The reorganization plan has been prepared in accordance with chapter 9 of title 5 of the United States Code. At my direction, it has been discussed with each member of the interested Committees of Congress or with their Staff Assistants. I have found, after investigation, that each reorganization included in the plan is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code.

I have also found that it is necessary to include in the plan, by reason of the reorganization made, provisions for the appointment and compensation of the new officers specified in sections 201, 203 and 301–303 of the plan. The rates of compensation fixed for these officers are comparable to those fixed for officers in the executive branch of the Government having similar responsibilities.

The functions which would be abolished by the provisions of section 503(c) of the reorganization plan are provided for in subsection (e) of Section 6 of the Act of March 3, 1925, 43 Stat. 1121, as amended (D.C. Code, sec. 40–603(e)).

The plan would not impair the corporate status of the District of Columbia government. Nor would it in any way detract from the powers which the Congress exercises with respect to the District.

This reorganization plan would provide improved management of the municipal responsibilities vested by Congress in the government of the District of Columbia. It would bring savings to the District taxpayers and the Federal Government, although overall costs will not be less because of the increasing scale and complexity of municipal government. The precise amount of such savings cannot be itemized at this time.

The proposed reorganization is in no way a substitute for home rule. As I stated in my Message on the Nation's Capital, the plan "will give the District a better organized and more efficient government . . . but only home rule will provide the District with a democratic government—of, by and for its citizens."

I remain convinced more strongly than ever that Home Rule is still the truest course. We must continue to work toward that day—when the citizens of the District will have the right to frame their own laws, manage their own affairs, and choose their own leaders. Only then can we redeem that historic pledge to give the District of Columbia full membership in the American Union.

I recommend that the Congress allow the reorganization plan to become effective.

LYNDON B. JOHNSON.

THE WHITE HOUSE, *June 1, 1967.*

REORGANIZATION PLAN NO. 2 OF 1968

(33 F.R. 6965, F.R. Doc. 68–5562; Filed, May 8, 1968; 8:49 a.m.)

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, February 26, 1968, pursuant to the provisions of chapter 9 of title 5 of the United States Code. The plan became effective at the close of June 30, 1968.

URBAN MASS TRANSPORTATION

SECTION 1. *Transfer of Functions.*—(a) There are hereby transferred to the Secretary of Transportation:

(1) The functions of the Secretary of Housing and Urban Development and the Department of Housing and Urban Development under the Urban Mass Transportation Act of 1964 (78 Stat. 302; 49 U.S.C. 1601–1611), except that there is reserved to the Secretary of Housing and Urban Development (i) the authority to make grants for or undertake such projects or activities under sections 6(a), 9, and 11 of that Act (49 U.S.C. 1605(a); 1607a; 1607c) as primarily concern the relationship of urban transportation systems to the comprehensively planned development of urban areas, or the role of transportation planning in overall urban planning, and (ii) so much of the functions under sections 3, 4, and 5 of the Act (49 U.S.C. 1602–1604) as will enable the Secretary of Housing and Urban Development (A) to advise and assist the Secretary of Transportation in making findings and determinations under clause (1) of section 3(c), the first sentence of section 4(a), and clause (1) of section 5 of the Act, and (B) to establish jointly with the Secretary of Transportation the criteria referred to in the first sentence of section 4(a) of the Act.

(2) Other functions of the Secretary of Housing and Urban Development, and functions of the Department of Housing and Urban Development or of any agency or officer thereof, all to the extent that they are incidental to or necessary for the performance of the functions transferred by section 1(a)(1) of this reorganization plan, including, to such extent, the functions of the Secretary of Housing and Urban Development and the Department of Housing and Urban Development under (i) title II of the Housing Amendments of 1955 (69 Stat. 642; 42 U.S.C. 1491–1497), insofar as functions thereunder involve assistance specifically authorized for mass transportation facilities or equipment, and (ii) title IV of the Housing and Urban Development Act of 1965 (79 Stat. 485; 42 U.S.C. 3071–3074).

(3) The functions of the Department of Housing and Urban Development under section 3(b) of the Act of November 6, 1966 (P.L. 89–774; 80 Stat. 1352; 40 U.S.C. 672(b)).

(b) Any reference in this reorganization plan to any provision of law shall be deemed to include, as may be appropriate, reference thereto as amended.

SEC. 2. *Delegation.*—The Secretary of Transportation may delegate any of the functions transferred to him by this reorganization plan to such officers and employees of the Department of Transportation as he designates, and may authorize successive redelegations of such functions.

SEC. 3. *Urban Mass Transportation Administration.*—(a) There is hereby established within the Department of Transportation an Urban Mass Transportation Administration.

(b) The Urban Mass Transportation Administration shall be headed by an Urban Mass Transportation Administrator, who shall be appointed by the President, by and with the advice and consent of the Senate, and shall be compensated at the rate now or hereafter provided for Level III of the Executive Schedule Pay Rates (5 U.S.C. 5314). The Administrator shall perform such duties as the Secretary of Transportation shall prescribe and shall report directly to the Secretary.

SEC. 4. *Interim Administrator.*—The President may authorize any person who immediately prior to the effective date of this reorganization plan holds a position in the executive branch of the government to act as Urban Mass Transportation Administrator until the office of Administrator is for the first time filled pursuant to the provisions of section 3(b) of this reorganization plan or by recess appointment, as the case may be. The person so designated shall be entitled to the compensation attached to the position he regularly holds.

SEC. 5. *Incidental Transfers.*—(a) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with the functions transferred to the Secretary of Transportation by this reorganization plan as the Director of the Bureau of the Budget shall determine shall be transferred from the Department of Housing and Urban Development to the Department of Transportation at such time or times as the Director shall direct.

(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided for in subsection (a) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 6. *Effective Date.*—The provisions of this reorganization plan shall take effect at the close of June 30 1968, or at the time determined under the provisions of section 906(a) of title 5 of the United States Code, whichever is later.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

As long as he has lived in cities, man has struggled with the problem of urban transportation. But:

—Never before have these problems affected so many of our citizens.

—Never before has transportation been so important to the development of our urban centers.

—Never before have residents of urban areas faced a clearer choice concerning urban transportation—shall it dominate and restrict enjoyment of all the values of urban living, or shall it be shaped to bring convenience and efficiency to our citizens in urban areas.

How America and its cities solve the transportation problem depends largely on our two newest Federal Departments—the Department of Transportation and the Department of Housing and Urban Development:

—The Department of Housing and Urban Development is responsible for the character of all urban development.

—The Department of Transportation is concerned specifically with all the modes of transportation and their efficient interrelationship.

At present, responsibility for program assistance for urban highways and urban airports, and urban mass transportation is divided between the Department of Transportation and the Department of Housing and Urban Development. As a result:

—Federal coordination of transportation systems assistance is more difficult than it need be.

—Communities which have measured their own needs and developed comprehensive transportation proposals must deal with at least two federal agencies to carry out their programs.

To combine efficiently the facilities and services necessary for our urban centers and to improve transportation within our cities, State and local government agencies should be able to look to a single federal agency for program assistance and support. The large future cost of transportation facilities and services to the Federal Government, to State and local governments, and to the transportation industry makes side investments and efficient transportation systems essential.

An urban transportation system must:

—combine a basic system of efficient, responsive mass transit with all other forms and systems of urban, regional, and inter-city transportation;

—conform to and support balanced urban development.

In this, my second reorganization plan of 1968, I ask the Congress to transfer urban mass transportation programs to the Secretary of Transportation and to establish an Urban Mass Transportation Administration within the Department of Transportation to strengthen the organizational capacity of the Federal Government to achieve these objectives.

The plan transfers to and unifies in a new Urban Mass Transportation Administration in the Department of Transportation those functions which involve urban mass transportation project assistance and related research and development activities. Because urban research and planning and transportation research and planning are closely related, however, the plan provides that the Department of Housing and Urban Development perform an important role in connection with transportation research and planning insofar as they have significant impact on urban development.

We expect the Department of Transportation to provide leadership in transportation policy and assistance. The Department of Housing and Urban Development will provide leadership in comprehensive planning at the local level that includes transportation planning and relates it to broader urban development objectives.

The transfer of urban mass transportation programs will not diminish the overall responsibilities of the Department of Housing and Urban Development with respect to our cities. Rather, adequate authority is reserved to that Department to enable it to join with the Department of Transportation to assure that urban transportation develops as an integral component of the broader development of growing urban areas.

The new Urban Mass Transportation Administration in the Department of Transportation, working with other elements of the Department, will consolidate and focus our efforts to develop and employ the most modern transportation technology in the solution of the transportation problems of our cities.

The reorganization plan provides for an Administrator at the head of the Administration who would be appointed by the President, by and with the advice and consent of the Senate. The Administrator would report directly to the Secretary of Transportation and take his place in the Department with the heads of the Federal Aviation Administration, Federal Highway Administration, Federal Railroad Administration and the Coast Guard.

I have found, after investigation, that each reorganization included in the reorganization plan transmitted herewith is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code.

I have also found that it is necessary to include in the accompanying plan, by reason of these reorganizations, provisions for the appointment and compensation of the new officer specified in section 3(b) of the plan. The rate of compensation fixed for this officer is comparable to those fixed for officers in the Executive Branch of the Government having similar responsibilities.

The reorganizations included in this plan will provide more effective management of transportation programs. It is not feasible to itemize the reduction in expenditures which the plan will achieve, but I have no doubt that this reorganization will preserve and strengthen overall comprehensive planning for developing urban areas while simultaneously insuring more efficient transportation systems for our cities than would otherwise have occurred.

I strongly urge that the Congress allow the reorganization plan to become effective.

REORGANIZATION PLAN NO. 3 OF 1968

(33 F.R. 7747, F.R. Doc. 68–6385; Filed May 27, 1968; 9:25 a.m.)

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress asembled, March 13, 1968, pursuant to the provisions of chapter 9 of title 5 of the United States Code. The plan became effective at the close of June 30, 1968.

DISTRICT OF COLUMBIA RECREATION FUNCTIONS

SECTION 1. *Definitions.* (a) As used in this reorganization plan, the term "the Recreation Board" means the District of Columbia Recreation Board provided for in D.C. Code, sec. 8–201 and in other law.

(b) References in this reorganization plan to any provision of the District of Columbia Code are references to the provisions of statutory law codified under that provision and include the said provision as amended, modified, or supplemented prior to the effective date of this reorganization plan.

SEC. 2. *Transfer of functions to Commissioner.* There are hereby transferred to the Commissioner of the District of Columbia all functions of the Recreation Board or of its chairman and members and all functions of the Superintendent of Recreation (appointed pursuant to D.C. Code, sec. 8–209).

SEC. 3. *Delegations.* The functions transferred by the provisions of section 2 hereof shall be subject to the provisions of section 305 of Reorganization Plan No. 3 of 1967 (32 F.R. 11671).

SEC. 4. *Incidental transfers.* (a) All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, available, or to be made available in connection with the functions of the Recreation Board or the Superintendent of Recreation are hereby transferred to the Commissioner of the District of Columbia.

(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided in subsection (a) of this section shall be carried out in such manner as he may direct and by such agencies as he shall designate.

SEC. 5. *Abolition.* The Recreation Board, together with the position of Superintendent of Recreation, is hereby abolished. The Commissioner of the District of Columbia shall make such provisions as he may deem necessary with respect to winding up the outstanding affairs of the Recreation Board and the Superintendent of Recreation.

SEC. 6. *Effective date.* The provisions of this reorganization plan shall take effect at the close of June 30, 1968 or on the date determined under section 906(a) of title 5 of the United States Code, whichever is later.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

In the past few years Congress and the President have pledged to make the Nation's Capital a model of excellence for America: in government, in housing, in city planning, in law enforcement, in transportation.

But the quality of any city is not just a matter of efficiency and public order. If it is to be truly great, the city must be lively and inviting—a place of beauty and pleasure.

The city's life is lived not only in its buildings, but in its pools, playgrounds and recreation centers, in the places where the young gather to find excitement and delight, where the old come to find relaxation, fresh air, companionship.

In Washington, recreation is a vital element of the city's school enrichment activities, its model city project and its summer programs.

But the D.C. Recreation Department is not an integral part of the District Government. With its six-member independent board, the autonomy of the Department prevents the D.C. Commissioner from providing policy supervision to the city's recreation activities and from relating them to other community service programs—in health, education, child care, and conservation.

There is no reason to distinguish between recreation and other community service programs now vested in the Commissioner.

Accordingly, I am today submitting to the Congress Reorganization Plan No. 3 of 1968. This plan brings recreation programs under the authority of the D.C. Commissioner. It enables the new City Government to make recreation an integral part of its strategy to bring more and better community services to the people who live in the city.

The Plan achieves these objectives by abolishing the present Recreation Board and the Office of the Superintendent of Recreation. It transfers their functions to the D.C. Commissioner.

The accompanying reorganization plan has been prepared in accordance with chapter 9 of title 5 of the United States Code. I have found, after investigation, that each reorganization included in the plan is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code.

Closer coordination of recreation with other municipal improvement programs of the District Government and the improved efficiency of recreation management will produce a higher return on the taxpayer's investment on recreation programs, though the amount of savings cannot be estimated at this time.

I urge the Congress to permit this reorganization plan to take effect.

THE WHITE HOUSE, *Mar. 13, 1968.*

REORGANIZATION PLAN NO. 4 OF 1968

(33 F.R. 7749, F.R. Doc. 68–6386; Filed, May 27, 1968; 9:25 a.m.)

Prepared by the President and transmitted to the Senate and the House of Representatives in Congress assembled, March 13, 1968, pursuant to the provisions of chapter 9 of title 5 of the United States Code. The plan became effective May 23, 1968.

DISTRICT OF COLUMBIA REDEVELOPMENT LAND AGENCY

SECTION 1. *Appointments.* (a) The functions of the President of the United States with respect to appointing certain members of the Board of Directors of the District of Columbia Redevelopment Land Agency (D.C. Code, sec. 5–703) are hereby transferred to the Commissioner of the District of Columbia.

(b) Nothing in this reorganization plan shall be deemed to terminate the tenure of any member of the Board of Directors of the District of Columbia Redevelopment Land Agency now in office.

SEC. 2. *Relationship of Board of Directors and Commissioner.* (a) There are transferred from the Board of Directors of the District of Columbia Redevelopment Land Agency to the Commissioner of the District of Columbia the functions of adopting, prescribing, amending and repealing bylaws, rules, and regulations for the exercise of the powers of the Board under D.C. Code, secs. 5–701 to 5–719 or governing the manner in which its business may be conducted (D.C. Code, sec. 5–703(b)).

(b) Any part of the functions transferred by this section may be delegated by the Commissioner to the Board.

SEC. 3. *References to District of Columbia Code.* References in this reorganization plan to any provision of the District of Columbia Code are references to the provisions of statutory law codified under that provision and include the said provision as amended, modified, or supplemented prior to the effective date of this reorganization plan.

MESSAGE OF THE PRESIDENT

To the Congress of the United States:

Urban Renewal is a vital weapon in the Nation's attack on urban blight and physical decay. In the firm hands of a local executive determined to improve the face of his city, it is a powerful tool of reform.

In the District of Columbia, urban renewal is managed by a Federal Agency, the D.C. Redevelopment Land Agency, headed by an independent five-man Board of Directors. Although the District Government pays the entire local share of the costs of urban renewal and although the Commissioner of the District of Columbia appoints three of the five members of the RLA Board, the Agency need not follow the Commissioner's leadership or administrative direction.

To strengthen the D.C. Commissioner's authority to initiate and guide the administration of urban renewal, I am today transmitting to the Congress Reorganization Plan No. 4 of 1968. This plan:

—gives the D.C. Commissioner the authority to appoint all five members of the RLA Board, by transferring to him the appointment function now vested in the President;

—transfers to him the authority to prescribe the rules and regulations governing the conduct of business by RLA. This function is now vested in the Board of Directors.

Urban Renewal involves slum clearance, demolition, the relocation of families, the provision of new housing,

the stimulation of rehabilitation and new employment. Throughout the Nation, it is clear that authority and leadership by the local chief executive is essential to weld together the full range of municipal functions and community service programs to change conditions in city slums.

In our Capital City the hopes for a balanced New Town and new housing development on the Fort Lincoln site in Northeast Washington, the rebuilding of the Shaw neighborhood, and a successful Model Cities program hinge on the leadership of the D.C. Commissioner. Members of the Congress have repeatedly stressed the need to establish the Commissioner's effective control of all functions essential to local redevelopment. The attached plan takes a major step toward that objective.

The plan does not alter the corporate status of the Redevelopment Land Agency or any of the authorities now vested by law in the Agency.

The accompanying reorganization plan has been prepared in accordance with chapter 9 of title 5 of the United States Code. I have found, after investigation, that each reorganization included in the plan is necessary to accomplish one or more of the purposes set forth in section 901(a) of title 5 of the United States Code.

There are no direct savings deriving from this plan. However, it will improve the management of programs aimed at reviving the deteriorated social, economic, and physical structure of this city, our National Capital. The benefits and savings from a more successful attack on these problems cannot be estimated in advance, but their reality cannot be denied.

To achieve our goal of a model Capital, I therefore urge the Congress to permit this reorganization plan to take effect.

THE WHITE HOUSE, *March 13, 1968.*

REORGANIZATION ORDER NO. 3.—DEPARTMENT OF GENERAL ADMINISTRATION
(Aug. 28, 1952, as amended)

Part V of Organization Order No. 2, dated Dec. 13, 1967, Commissioner's Order No. 67–23, revoked this Order and abolished the department, offices and officers established thereunder.

REORGANIZATION ORDER NO. 8.—MANAGEMENT OFFICE
(Sept. 25, 1952, as amended)

Part V of Organization Order No. 2, dated Dec. 13, 1967, Commissioner's Order No. 67–23, revoked this Order and abolished the department, offices and officers established thereunder.

REORGANIZATION ORDER NO. 18.—ADMINISTRATIVE SERVICES OFFICES
(Oct. 23, 1952, as amended)

Part V of Organization Order No. 3, dated Dec. 13, 1967, Commissioner's Order No. 67–24, revoked this Order and abolished the department, offices and officers established thereunder.

REORGANIZATION ORDER NO. 19.—INTERNAL AUDIT OFFICE
(Nov. 1952 as amended)

Part V of Organization Order No. 3, dated Dec. 13, 1967, Commissioner's Order No. 67–24, revoked this Order and abolished the department, offices and officers established thereunder.

REORGANIZATION ORDER NO. 21.—PERSONNEL OFFICE
(Nov. 20, 1952, as amended)

Part V of Organization Order No. 2, dated Dec. 13, 1967, Commissioner's Order No. 67–23, revoked this Order and abolished the department, offices and officers established thereunder.

REORGANIZATION ORDER NO. 24.—BUDGET OFFICE
(Dec. 30, 1952, as amended)

Part V of Organization Order No. 2, dated Dec. 13, 1967, Commissioner's Order No. 67–23, revoked this Order and abolished the department, offices and officers established thereunder.

REORGANIZATION ORDER NO. 29.—PROCUREMENT OFFICE
(Apr. 14, 1953, as amended)

Part V of Organization Order No. 3, dated Dec. 13, 1967, Commissioner's Order No. 67–24, revoked this Order and abolished the department, offices and officers established thereunder.

REORGANIZATION ORDER NO. 31.—POLICE AND FIREMEN'S RETIREMENT AND POLICE BOARD
(Apr. 30, 1953, as amended)

Part IV of Organization Order No. 8, dated Apr. 18, 1968, Commissioner's Order No. 68–290, revoked this Order to the extent the same is inconsistent with Org. Ord. No. 8. Org. Ord. No. 12, dated Aug. 6, 1968, redesignated this Reorg. Ord. as Org. Ord. No. 12 and amended to read as set out in Org. Ord. No. 12.

REORGANIZATION ORDER NO. 33.—BOARD OF PAROLE
(May 28, 1953, as amended)

This order has been amended by and redesignated as Org. Ord. No. 6, dated Dec. 26, 1967, Commissioner's Order No. 67–95, set out below in this appendix. See also Part IV of Org. Ord. No. 8, dated Apr. 18, 1968.

REORGANIZATION ORDER NO. 36.—MINIMUM WAGE AND INDUSTRIAL SAFETY BOARD

(Reorg. Ord. No. 36, C.O. 302,853/14, June 16, 1953, as amended Sept. 20, 1956, July 14, 1960, Sept. 20, 1960, Jan. 7, 1966, and Feb. 7, 1967.)

* * * * *

PART VII

Minimum wages and overtime compensation.—The Board shall administer the act approved September 19, 1918 (Title 36, Chapter 4, D.C. Code), as amended, establishing minimum wages and overtime compensation for employees in the District of Columbia.

PART VIII

Effective date.—This Order shall become effective on and after June 16, 1953.

REORGANIZATION ORDER NO. 38.—FIRE DEPARTMENT
(June 18, 1953, as amended)

Part IV of Org. Ord. No. 8, dated Apr. 18, 1968, Commissioner's Order No. 68–290, revoked this Order to the extent the same is inconsistent with Org. Ord. No. 8.

REORGANIZATION ORDER NO. 39.—FIRE TRIAL BOARDS
(June 18, 1958, as amended)

Part IV of Org. Ord. No. 8, dated Apr. 18, 1968, Commissioner's Order No. 68–290, revoked this Order to the extent the same is inconsistent with Org. Ord. No. 8.

REORGANIZATION ORDER NO. 40.—EXECUTIVE OFFICE OF THE BOARD OF COMMISSIONERS
(June 23, 1953)

Part V of Organization Order No. 2, dated Dec. 13, 1967, Commissioner's Order No. 67–23, revoked this Order and abolished the department, offices and officers established thereunder.

REORGANIZATION ORDER NO. 42.—DEPARTMENT OF BUILDINGS AND GROUNDS

(Reorganization Ord. No. 42, L.S. 4159–B, June 23, 1963, as amended Aug. 11, 1954, Nov. 23, 1954, Jan. 31, 1956, Apr. 24, 1956, Feb. 7, 1961, Oct. 17, 1961, Jan. 3, 1963, June 3, 1965, and Jan. 14, 1969.)

* * * * *

PART II

* * * * *

B. * * *

7. Provides guidelines and selectively delegates authority to Department and Office Heads to make non-structural repairs to District Government owned buildings under their control, provided proper licenses and permits are obtained in advance from the Department of Licenses and Inspections.

REORGANIZATION ORDER NO. 43.—DEPARTMENT OF INSURANCE

(Reorganization Ord. No. 43, G. F. No. 36–000, June 23, 1953, as amended Aug. 26, 1962, Mar. 5, 1965, and Aug. 12, 1968.)

* * * * *

PART VIII

A. There is delegated to the Superintendent of Insurance the function, now vested in the Board of Commissioners by the Act of May 17, 1932 (47 Stat. 158, ch. 189; § 35–204, D.C. Code, 1961 ed. [now 1967 ed.]), of granting or denying to insurance companies permission to remove from the District of Columbia the principal office, books, records, and files of such companies.

2. The function delegated by this Part may not be redelegated to other officials or employees of the Department of Insurance, and is subject to withdrawal or modification at any time.

B. There are delegated to the Superintendent of Insurance the functions vested in the Commissioner of the District of Columbia by the District of Columbia Insurance Placement Act (Title XII, Housing and Urban Development Act of 1968, approved August 1, 1968; Public Law 90–448).

The Superintendent of Insurance is hereby authorized to redelegate all or part of such functions as, in his judgment, may be necessary in the interests of efficient administration.

REORGANIZATION ORDER NO. 47.—BOARD OF POLICE AND FIRE SURGEONS

(June 26, 1953, as amended)

Part III of Commissioner's Order No. 70–369, dated Sept. 28, 1970, provided that this Order is superseded.

Part IV of Org. Ord. No. 8, dated Apr. 18, 1968, Commissioner's Order No. 68–290, revoked this Order to the extent the same is inconsistent with Org. Ord. No. 8.

REORGANIZATION ORDER NO. 48.—POLICE TRIAL AND REVIEW BOARDS

(June 26, 1953, as amended)

Part IV of Org. Ord. No. 8, dated Apr. 18, 1968, Commissioner's Order No. 68–290, revoked this order to the extent the same is inconsistent with Org. Ord. No. 8.

REORGANIZATION ORDER NO. 49.—OFFICE OF CIVIL DEFENSE

(June 26, 1953, as amended)

Part IV of Org. Ord. No. 8, dated Apr. 18, 1968, Commissioner's Order No. 68–290, revoked this Order to the extent the same is inconsistent with Org. Ord. No. 8.

REORGANIZATION ORDER NO. 50.—OFFICE OF THE CORPORATION COUNSEL

(Reorg. Ord. No. 50, L.S. 4240–B, June 26, 1953, as amended June 6, 1955, Feb. 10, 1956, Aug. 30, 1956, Oct. 18, 1956, Feb. 4, 1958, Mar. 13, 1958, June 7, 1960, Nov. 3, 1967, Dec. 18, 1967, Oct. 28, 1968, May 25, 1970, Oct. 6, 1970, and Oct. 23, 1970.)

* * * * *

PART II

Organization.—The Office of the Corporation Counsel shall be comprised of the following organizational components, responsible for the performance of the functions outlined:

A. *Office of the Corporation Counsel and Principal Assistant Corporation Counsel:*

(a) *Corporation Counsel and Principal Assistant Corporation Counsel.*—Is attorney for and chief law officer of the District of Columbia Government and has charge of all of its law business. Through his professional staff conducts prosecution of all cases, including criminal, instituted by it and defense of all suits against the District of Columbia, its officers, employees, and agents arising out of performance of official duties.

Furnishes legal advice to the Commissioner and District of Columbia Council and the several departments and agencies of the District of Columbia and upon request of said Commissioner and District of Columbia Council renders written opinions to them. Such opinions, in the absence of specific action by the Commissioner or Council to the contrary, or until overruled by controlling court decision, shall be the guiding statement of law, to be followed by all District officers and employees in the performance of their official duties.

Is statutory General Counsel of the Public Utilities Commission [Public Service Commission].

Supervises the staff of the Office of the Corporation Counsel and the administrative services necessary for the internal operations of the Office.

Is a member and Chairman of the Contract Appeals Board and performs this function through an Assistant Corporation Counsel designated by him.

Is designated by the D.C. Armory Board as its general counsel and, with the approval of the Board of Commissioners, serves in that capacity without additional compensation.

* * * * *

E. *Taxation Division.*—Prepares and tries all civil tax cases and all appeals to appellate courts, whether in the District of Columbia or elsewhere, in which the District of Columbia is a party or has an interest.

Prosecutes in the Tax Division of the Superior Court of the District of Columbia, all violations of the taxing acts of the District of Columbia and all violations of regulations adopted under the taxing acts of the District of Columbia in which the Corporation Counsel is the prosecutor.

Performs all legal duties related to tax legislation, tax questions and other tax matters.

Advises the Commissioner of the District of Columbia, department and office heads and, where requested, the District of Columbia Council, on all tax questions and matters.

Performs such additional duties as are prescribed, from time to time, by the Corporation Counsel or the Principal Assistant Corporation Counsel.

F. *Law Enforcement Division.*—Prosecutes in the Superior Court of the District of Columbia, all violations of municipal regulations and violations of acts of Congress (other than those involving tax) under which the Corporation Counsel is named as prosecutor.

Performs such additional duties as are prescribed, from time to time, by the Corporation Counsel or the Principal Assistant Corporation Counsel.

* * * * *

I. *Special Litigation Division.*—Prepares and tries cases, and performs related legal duties in connection with the following: injuries to wards of the Department of Human Resources; recoupment of monies paid out by that Department in the form of public assistance; matters relating to mental health and mental retardation and the collection of maintenance costs for mentally ill and mentally retarded persons committed at District expense to District institutions; and the transfer of prisoners who become mentally ill while serving sentence in a District facility.

Investigates and takes necessary action to collect accounts of mental health patients and District of Columbia General and Glenn Dale Hospital accounts; prosecutes minimum wage and wage collection cases; represents interest of District of Columbia in hospital liens filed by public and private hospitals.

Performs all legal work involved in representing the interests of the District of Columbia in probate and escheat cases. Applies for administration and acts as administrator on behalf of the District of Columbia in any estate in which the assets consist solely of personal property valued at more than $500.00, but less than $2,500.00, and in which the District of Columbia is the principal creditor of said estate by reason of services rendered or expenditures made by the District of Columbia. All funds so collected shall be deposited into Miscellaneous Trust Fund Account (by individual estate), to be thereafter disbursed by the Disbursing Officer, Finance Office, upon direction of the Administrator: Provided, That such disbursements, exclusive of administration expenses, shall be in accordance with the final order of the United States District Court for the District of Columbia.

Prepares and argues cases arising under the Reciprocal Enforcement of Support Act; prepares and tries civil

actions to establish paternity and provide support, civil actions for nonsupport, and proceedings relating to intra-family offenses.

Assists in preparing legislation pertaining to Special Litigation Division matters.

Performs such additional duties, in the nature of special assignments and otherwise, as are prescribed from time to time by the Corporation Counsel or the Principal Assistant Corporation Counsel.

J. *Juvenile Division.*—Interviews, approves for filing, prepares petitions, prepares for trial and presents evidence in proceedings relating to delinquency, neglect or need of supervision within the jurisdiction of the Family Division of the Superior Court of the District of Columbia; represents the District of Columbia as a party to all proceedings.

Prepares and files motions for transfer for criminal prosecution, consent decrees, physical and mental examinations, extension of disposition orders, and revocation of probation.

Prosecutes in the Family Division of the Superior Court violations of the compulsory education law and the child labor law.

Represents the Social Services Administration, Department of Human Resources, in contested adoption cases.

Performs legal work required in connection with proceedings under the Interstate Compact on Juveniles (title IV of the District of Columbia Court Reform and Criminal Procedure Act of 1970).

Advises and assists police officers and other employees of the District of Columbia Government on matters involving juveniles.

Advises staff members of the Family Division of the Superior Court on all legal matters arising out of their official duties relating to delinquency, neglect or need of supervision cases.

Assists in preparing legislation pertaining to Juvenile Division matters.

Performs such additional duties, in the nature of special assignments and otherwise, as are prescribed from time to time by the Corporation Counsel or the Principal Assistant Corporation Counsel.

PART III

A. * * *

1. Instituted against the District of Columbia up to and including $5,000, or, if approved by the Assistant to the Commissioner, up to and including $10,000.

2. Instituted on behalf of the District of Columbia by reducing the amount of such claim or suit by an amount not exceeding $5,000, or, if approved by the Assistant to the Commissioner, in an amount not exceeding $10,000.

* * * * *

D. That the Corporation Counsel is hereby authorized to waive any claim and release any lien arising under the provisions of Section 18 of the Public Assistance Act of 1962 (Section 3–217, D.C. Code, 1967 ed.) when, in his judgment, such waiver or release is appropriate.

REORGANIZATION ORDER NO. 55.—DEPARTMENT OF LICENSES AND INSPECTIONS

(Reorganization Ord. No. 55, L.S. 4263–B, June 30, 1953, as amended Aug. 13, 1953, Dec. 17, 1953, June 30, 1954, Oct. 26, 1954, Aug. 11, 1955, Jan. 31, 1956, July 10, 1956, Oct. 2, 1956, Oct. 16, 1956, June 13, 1957, Nov. 27, 1957, July 22, 1958, June 1, 1960, Feb. 21, 1961, Nov. 7, 1961, Dec. 4, 1962, May 12, 1964, June 17, 1965, Mar. 16, 1967, and Feb. 28, 1969.)

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PART II

Purpose.—The Department of Licenses and Inspections is established for the purpose of: administering the laws enacted by Congress and the regulations for the control of construction, zoning and occupancy use, erection, maintenance and repair, inspection and removal of all buildings and their appurtenances, and electrical and mechanical equipment within the District of Columbia, excepting public buildings or premises under the control of the Federal Government; enforcing the Consumer Affairs Regulations (effective July 1, 1969); administering the D.C. Standard Weights and Measures Law; supervising and controlling the municipal markets and collecting annual revenue for rents and space and for wharfage at the Municipal Fish Wharf; administering the License Act of 1932, as amended, and regulations promulgated thereunder requiring licenses of certain businesses and callings in the District of Columbia; administering the acts requiring licenses for Cooperative Associations, Credit Unions, Pawnbrokers, and Loan Brokers; administering such portions of the Acts as require licenses for: Cigarette Vending Machine Operators and Retail and Wholesale Cigarette dealers; administering the portions of the Act of July 5, 1945 which require the payment of a dog tax and the issuance of a dog tag; administering the provisions relating to the licensing of peddlers and the granting of permits for the use of public space contained in the act of August 6, 1956, known as the "Presidential Inaugural Ceremonies Act;" administering and interpreting all laws and regulations governing housing in the District of Columbia; and proposing to the Commissioner appropriate provisions for codes and regulations relating to such housing: provided, however, that the Department of Public Health shall fully collaborate in the development and presentation to the Commissioner of such proposed provisions to the extent that they affect the public health of the community and its individual members.

PART III

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B. *Office of Administration.*

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8. Maintains the Department's Central Files. Such files contain records pertaining to Permit and Certificate issuance and inspection reports of completed work. Is responsible for developing procedures and systems to include other categories of Departmental records not presently serviced by the Central File system.

* * * * *

E. *License and Permit Division.*

1. Processes and issues licenses, permits, and certificates for: the operation of businesses (including those as retail sellers or sales finance companies as specified in the Consumer Affairs Regulations (effective July 1, 1969)); building and certain other types of construction and alteration or repair; building use; and other miscellaneous matters requiring a license, permit, or certificate.

2. Provides advice and assistance to the public as to the requirements for license, permit, and certificate issuance, the preparation of applications, and the explanation of regulations governing such matters.

3. Serves as the central point from which the public requests licenses, permits, and certificates; receives, reviews, sorts, routes, and controls all such applications during their processing.

4. Normally notifies applicants of approval or disapproval of their applications for licenses, permits, and certificates issued by the Department. Upon receipt of recommendations of approval from the Housing Division, the Inspection Division, Zoning Division, the Fire Department, the Department of Public Health, and other departments, as appropriate, issues licenses, permits, certificates, or other notices of compliance with applicable regulations. Upon receipts of recommendations of disapproval from the Divisions of the Department of Licenses and Inspections and other departments, examines data received and requests supplemental data if necessary for complete clarity. Prepares consolidated list of deficiencies and remedial actions required, and furnishes copy to applicant with advice that applicant, if he desires to discuss the matter or secure further information, may meet for such purpose with D.C. Government officials concerned; if applicant desires such meeting, refers him to the officials involved or arranges meeting with such officials, as appropriate. Upon receipt of notice from agencies involved in such meetings as to whether they desire to revise their findings or recommendations as a result of the meeting, advises applicant of such determinations and, in non-approval cases, notifies applicant in writing that if deficiencies are not remedied as required, license, permit, certificate, or other form of approval will be denied; except that where recommendations made by any of the recommending agencies (except the Department of Public Health in connection with inspections for which that Department is responsible), in the light of the facts

alleged by the recommending agency, may appear to be inconsistent with the language and intent of the applicable laws and regulations, refers such recommendations together with all pertinent details to the Office of the Director for review and determination. In inspectional matters for which the Department of Public Health is responsible, as outlined in Reorganization Order No. 57, as amended, the action taken shall be the same as that recommended by the Department of Public Health. All determinations relative to these matters may be appealed to the Board of Appeals and Review, and a statement to this effect shall be incorporated in all notices of unfavorable action sent to members of the public.

In cases in which renewal or transfer of licenses requires exercise of discretion and in which licenses were in effect for the year immediately preceding, may issue or transfer such licenses forthwith.

In case of renewal actions which are purely ministerial in nature, renews the permit or certificate without referral to other units of the Department or outside the Department.

When warranted, recommends to the Director the denial, revocation, or suspension of a Pawnbroker's license.

5. Recommends to the Board of Appeals and Review suspension or revocation, for good and sufficient cause, of licenses, permits, and certificates previously issued subject to such review as may be indicated by the Department Director.

6. In those instances in which an appeal is made to the Board of Appeals and Review, except where only a determination by the Department of Public Health is in question, the case will be reviewed by the Department Director or his designee before being submitted to the Board of Appeals and Review. Cases forwarded to the Board of Appeals and Review shall be fully documented so that the Board may be appraised of what has transpired prior to the appeals action, as well as the basis for the denial or proposed suspension or revocation of the license, permit, or certificate. Based upon the decision of the Board of Appeals and Review, performs the operating functions essential to denying, revoking, suspending, or restoring the license, permit, or certificate, as the case may be.

7. Inspects and controls the operations of loan companies, pawnbrokers, motor vehicle dealer sales contracts, and such other appropriate areas of business regulation as the Commissioners may prescribe.

8. Collaborates with the Office of the Collector of Taxes in developing and administering procedures relating to facilities for the collection of fees.

9. Investigates and takes necessary action to obtain compliance with the license, permit, and certificate laws and regulations (such as the Consumer Affairs Regulations (effective July 1, 1969)) enforced by this Department; furnishes expert services to other offices of the Department in non-compliance cases brought to Court; collaborates with the Office of the Corporation Counsel in representing the interests of the Department in legal matters; and provides expert testimony in court as required.

10. Acts as attorney-in-fact for licensed pawnbrokers for the purpose of receiving judicial and other processes and legal notices.

11. In the inspection and control of the operations of licensed pawnbrokers, the Chief of the License and Permit Division is authorized to require by subpena the production of books, papers, and records and the attendance, and examination under oath of all persons whomsoever whose testimony he may require relative to the loans of business of any such licensee, and he shall possess the power vested in the Commissioners by the Act of July 1, 1902 (D.C. Code, 1951 ed. [now 1967 ed.], § 1–237) to administer oaths, and he and his designated representatives are authorized to have free access to the accounts, papers, records, files, safes, vaults, offices, and places of business used in connection with any business conducted under a pawnbroker's license.

12. Certifies on the District of Columbia motor vehicle operator's permit issued to an applicant for a parking lot attendant's license, in the space on such permit set aside for "restrictions", the number of the license issued such applicant and its expiration date.

13. Assists retail businesses or sales finance companies in devising their installment contract and other forms to comply with the Consumer Affairs Regulations (effective July 1, 1969).

* * * * *

G. *Office of Consumer Affairs.*

1. Conducts studies, investigations and research with respect to retail transactions involving consumer goods and services and retail installment contracts or instruments of security arising from retail installment transactions including collection of the debt or enforcement of the security interest arising from such contracts or instruments.

2. Conducts educational programs, collects and disseminates information with respect to retail transactions in the District of Columbia as described in Paragraph 1 above.

3. Advises with other District Government agencies, when appropriate to assure enforcement of all laws and regulations designed to provide adequate protection to consumers.

4. Advises, consults and cooperates with other governments in the Washington metropolitan area either directly or through the Council of Governments, and with other interested persons and groups, including business, civic, and citizen organizations regarding consumer affairs, as described in Paragraph 1 above.

5. Promotes and encourages "self-policing" by business, professional and trade groups. Encourages voluntary cooperation in compliance with all District of Columbia regulations involving retail transactions.

6. Evaluates effectiveness of existing regulatory measures of the District and Federal Governments in providing adequate protection to consumers, and recommends laws or regulations when deemed appropriate to assure adequate protection and recommends modifications in existing laws and regulations where less stringent measures would appear to be adequate.

REORGANIZATION ORDER NO. 59.—BOARDS AND COMMISSIONS

(Reorganization Ord. No. 59, L.S. 4266–B, June 30, 1953, as amended July 17, 1953, Sept. 15, 1953, Dec. 10, 1953, June 17, 1954, June 27, 1957, June 24, 1958, July 29, 1958, Aug. 25, 1959, Jan. 26, 1960, Aug. 9, 1960, Mar. 21, 1961, May 25, 1961, Sept. 12, 1961, Feb. 20, 1962, Feb. 12, 1963, Mar. 13, 1963, Apr. 16, 1963, Aug. 5, 1963, Sept. 19, 1963, Oct. 10, 1963, Oct. 17, 1963, Jan. 21, 1964, Nov. 5, 1964, Feb. 21, 1966, Mar. 8, 1966, May 24, 1966, June 14, 1966, Dec. 15, 1966, Jan. 24, 1967, and Dec. 12, 1968.)

* * * * *

PART V

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C. Qualification requirements shall be determined and officers shall be chosen in accordance with the statutes and regulations applicable to the boards, commissions, and committee having the same or similar names prior to their abolition by the Board of Commissioners on June 30, 1953, except that any person shall be eligible for appointment upon the Board of Podiatry Examiners who is a citizen of the United States and who has been for five years next preceding his appointment in the active and reputable practice of podiatry in the District of Columbia, and except that any person shall be eligible for appointment upon the Board of Dental Examiners who is a citizen of the United States and who has been for five years next preceding his appointment, both a resident of the Washington Metropolitan Area, as defined in the National Capital Planning Act of 1952, as amended, and in the active and reputable practice of dentistry in the District of Columbia, and except that the Commissioners may, in their discretion, appoint the members to the Board of Barber Examiners as they determine is in the best interest of the District Government, either upon the recommendations of interested groups or individuals, or without such recommendations, and with the further exception that in making appointments of members of the Board of Podiatry Examiners the Commissioners shall not be restricted to nominations submitted to them or to the membership of any particular group or organization but shall appoint to said Board

such persons as they determine will be in the best interests of the District of Columbia, and except that the Commissioners may, in their discretion, appoint the members to the Real Estate Commission as they determine is in the best interests of the District of Columbia. The Steam and Other Operating Engineers' Board shall be composed of three members, two of whom are practical engineers, neither of whom shall be in the employ of the United States or the District of Columbia, and the Boiler Inspector for the District of Columbia; and three alternates, two of whom shall be practical engineers, neither of whom shall be in the employ of the United States or the District of Columbia, and the Assistant Chief, Smoke and Boiler Section, Department of Licenses and Inspections. The Commission on Licensure To Practice the Healing Art in the District of Columbia shall be composed of the President of the Board of Commissioners of the District of Columbia, the United States Commissioner of Education, the Corporation Counsel of the District of Columbia, the Superintendent of Public Schools of the District of Columbia, and the Director of Public Health of the District of Columbia, each ex officio.

The District of Columbia Board of Cosmetology shall be composed of six members appointed by the Board of Commissioners. Each member of the Board shall be at least twenty-five years of age, shall have had at least five years' practical experience in the practice of cosmetology, shall be a citizen of the United States and a resident of the District of Columbia and shall be in the active and reputable practice of cosmetology in the District of Columbia.

The statutory office of executive secretary of the Nurses' Examining Board is hereby abolished and the statutory duties of said office are hereby delegated to the Director. The Board of Dental Examiners shall be composed of five (5) members appointed by the Commissioner and five (5) alternate members. The alternate members shall be those five (5) persons who most recently served as regular members of the Board and whose terms have expired. The term of service of each alternate shall coincide with the term of the regular member whom he represents and as each regular member of the Board completes his term he shall automatically become an alternate member to his successor.

* * * * *

E. The Real Estate Commission of the District of Columbia shall be composed of four (4) members appointed by the Board of Commissioners. In addition thereto, the Finance Officer, D.C. (formerly the the Assessor, D.C.) or an official of the Finance Office to be designated by the Finance Officer as his Alternate shall continue to serve, ex-officio, as Chairman of the Real Estate Commission, but without added compensation for their services as such.

* * * * *

PART XIV

Board of Accountancy.

A. *Establishment.*—Pursuant to authority contained in section 4 of the Act of Congress approved September 16, 1966 (Public Law 89–578; 80 Stat. 786), there is hereby established, within the Department of Occupations and Professions, a Board of Accountancy.

B. *Delegation of Functions.*—The Board of Accountancy is hereby delegated all of the technical and professional functions vested in the Commissioners by said Act, including the function of making final determinations in connection with the issuance, denial, suspension, or revocation of certificates. The administrative functions authorized to be performed by the Act are hereby delegated to the Director of the Department of Occupations and Professions: *Provided,* That the functions of (1) adopting and prescribing rules and regulations, (2) establishing the time of frequency for periodic renewal registration, and (3) establishing, abolishing, increasing, or decreasing fees pursuant to authority contained in the Act, shall remain vested in the Commissioners.

C. *Composition of Board and Qualifications and Terms of Office of Members.*—The Board of Accountancy shall be composed of three certified public accountants of the District of Columbia with the qualifications set forth in section 4 of the aforesaid Act. The members shall be appointed by the Board of Commissioners for terms of three years. No Board member shall serve more than two consecutive terms.

D. *Compensation.*—Members of the Board of Accountancy shall receive the same rates of honoraria as are set for the other boards and commissions of the Department of Occupations and Professions by Commissioners' Order No. 60–1182, dated June 1, 1960.

E. *Applicability.*—Except where inconsistent with this Part, all other Parts of this Order shall apply to the Board of Accountancy.

ORGANIZATION ORDER NO. 1.—ORIGINATING AGENCY: Executive Office of the Commissioner

Organization Ord. No. 1, dated Nov. 3, 1967, provided:

WHEREAS, the Board of Commissioners of the District of Columbia, prior to the time Reorganization Plan No. 3 of 1967 (32 F.R. 11669) took effect pursuant to Section 504 thereof, had delegated to various officers. agencies, and employees certain functions, duties, powers and authorities vested in the said Board of Commissioners; and

WHEREAS, Section 401 of Reorganization Plan No. 3 of 1967 provides that at the time such section becomes effective, certain functions of the Board of Commissioners of the District of Columbia, including certain functions of the President of that Board and certain functions of each other member of that Board and including also the executive power vested therein, are transferred to the Commissioner of the District of Columbia; and

WHEREAS, Section 504(b) of Reorganization Plan No. 3 of 1967 provides that section 401, among other provisions of the Plan, shall become effective when for the first time there are in office under such Plan both (1) the Commissioner provided for in Part III of the Plan, and (2) not less than six members of the Council provided for in Part II of the Plan; and

WHEREAS, the Commissioner of the District of Columbia and the members of the Council have been appointed by the President, their appointments have been confirmed by the Senate, and each of the aforesaid persons has taken an oath or affirmation to support the Constitution of the United States and to faithfully discharge the duties imposed on him as the Commissioner or as a member of the Council, all as required by Reorganization Plan No. 3 of 1967:

NOW, THEREFORE, by virtue of the authority vested in me by Sections 303 and 305 of Reorganization Plan No. 3 of 1967, *It is ordered that:*

All functions, duties, powers, and authorities transferred from the Board of Commissioners, D.C., to the Commissioner of the District of Columbia, pursuant to Section 401 of Reorganization Plan No. 3 of 1967, are hereby delegated, effective at the time of such transfer, to those officers, agencies, and employees to whom or to which such functions, duties, powers, and authorities had been delegated by the Board of Commissioners, D.C., immediately prior to the taking effect of Section 401 of such Plan, this delegation to continue until otherwise ordered, except as hereafter provided; *And it is further ordered that:*

Wherever there appears in the title or body of existing Reorganization and Organization Orders the terms "the Board of Commissioners", "the Commissioners", "the three Commissioners", "a Commissioner", "the President of the Board of Commissioners", "the President, Board of Commissioners", "the Engineer Commissioner", "the Assistant to the Engineer Commissioner", "the Assistant Engineer Commissioner", "the Assistant Engineer Commissioner for Planning and Programming", "the Assistant Engineer Commissioner for Planning", "the Assistant Engineer Commissioner for Urban Development", "the Assistant Engineer Commissioner for Urban Renewal", or "the Assistant Engineer Commissioner for Operations", such terms shall be deemed to refer to the Commissioner of the District of Columbia or such person as he may hereafter designate, and all verbs, and modifying words and phrases used in connection with any such terms shall be deemed amended in accordance with appropriate grammatical usage; *And it is further ordered that:*

Whenever there appears in the title or body of existing Reorganization or Organization Orders the plural pos-

sessive of the term Commissioner, such term shall be deemed amended to the singular possessive; *And it is further ordered that:*

Wherever there appears in the body of existing Reorganization or Organization Orders the phrase "the Commissioner concerned", "the appropriate Commissioner", "the ranking member of the Board of Commissioners who is available and able to do so", "the ranking member of the Board of Commissioners who is available and able to assume command during a disaster", "the Commissioner to whom assigned", or "the designated Commissioner through whom the supervisory responsibility of the Commissioners is exercised", such phrases shall be deemed amended to refer to the Commissioner of the District of Columbia; *And it is further ordered that:*

Wherever there appears in the body of existing Reorganization and Organization Orders the terms "Secretary to the Board of Commissioners", "Secretary, Board of Commissioners", "Commissioners' Staff Assistant for Special Studies and Investigations", or "the three Administrative Assistants to the Commissioners", such terms shall be deemed amended to refer to such person or persons in the Executive Office of the Commissioner (as established by Organization Order No. 2, promulgated simultaneously herewith) as the Commissioner may designate; *And it is further ordered that:*

Wherever there appears in the body of existing Reorganization and Organization Orders the phrases "the Board of Commissioners through the Engineer Commissioner", or "the Board of Commissioners through the Assistant Engineer Commissioner for Urban Renewal", such phrases shall be deemed amended to "the Commissioner"; *And it is further ordered that:*

Wherever there appears in the body of existing Reorganization and Organization Orders the phrases "the Board of Commissioners generally and the Engineer Commissioner specifically", "the Engineer Commissioner and the Board of Commissioners", or "the Commissioners, or the Engineer Commissioner", such phrases shall be deemed amended to "the Commissioner"; *And it is further ordered that:*

The provisions of the Order shall be effective on November 3, 1967, at the time on that day when the functions of the Board of Commissioners of the District of Columbia including functions of the President of that Board and functions of each other member of that Board and including also the executive power vested therein are transferred to the Commissioner of the District of Columbia, pursuant to Section 401 of Reorganization Plan No. 3 of 1967.

ORGANIZATION ORDER NO. 2 (Amendment No. 1).— EXECUTIVE OFFICE OF THE COMMISSIONER

(Organization Ord. No. 2, Commissioner's Order No. 67–23, Dec. 13, 1967 as further amended Mar. 7, 1968, June 6, 1968, Sept. 30, 1968, Jan. 12, 1970, and Mar. 23 1970.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, *It is ordered that* Organization Order No. 2 dated November 3, 1967, is hereby amended and reissued in its entirety to read as follows:

PART I

Executive Office of the Commissioner.—There is hereby established, under the direction and control of the Commissioner of the District of Columbia, an Executive Office of the Commissioner. The Commissioner shall have full authority over such Office and all personnel assigned thereto.

PART II

Purpose.—The Executive Office of the Commissioner is established for the purpose of providing such managerial, budgetary, personnel, secretarial, informational and special assistance as the Commissioner may require in the administration of the Government of the District of Columbia. There is hereby transferred to the Executive Office the functions including the duties, powers and authorities of all officers and employees assigned to, and all positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available to the Executive Office of the Board of Commissioners as it existed immediately prior to the effective date of this Order, except as otherwise contained herein.

PART III

Organization.—There are hereby established in the Executive office of the Commissioner (a) a Management Office, headed by a Management Officer, (b) a Budget Office, headed by a Budget Officer, (c) a Personnel Office, headed by a Personnel Officer, (d) The Secretariat, headed by an Executive Secretary, and (e) such other organizational components and positions, with such duties and titles, as the Commissioner shall from time to time determine.

Program Coordination Office.—There is also established in the Executive Office, the Program Coordination Office, heretofore part of the Staff of the Office of the Director of General Administration, and there is hereby transferred to the Executive Office the functions including the duties, powers and authorities of all officers and employees assigned to, and all positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available to the Program Coordination Office as it existed immediately prior to the effective date of this Order.

Public Affairs Office.—There is also established in the Executive Office, a Public Affairs Office, headed by a Public Affairs Officer, who shall be responsible for supplementing the existing procedures for the preparation and dissemination, chiefly through the media of radio and television, of information to the public concerning the District of Columbia. The Public Affairs Officer also shall be responsible for the preparation of the narrative Annual Report of the Government of the District of Columbia which is submitted to Congress. There is hereby transferred to the Executive Office the functions, including the duties, powers and authorities of all officers and employees assigned to, and all positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available to the Public Affairs Office as it existed immediately prior to the effective date of this Order.

PART IV

Functions.—A. *Management Office.*

1. The Management Office is responsible for:

a. Assisting and advising the Commissioner with respect to planning, developing, coordinating, and directing the management program and related management activities for the District of Columbia Government, covering the complete range of functions contained therein, with the major objectives of economy and increased efficiency. This Office shall also be responsible for making studies and recommendations for developing the organizational structure, distribution and redistribution of functions, lines of authority, staffing, space, methods and procedures necessary for an orderly implementation of Reorganization Plan No. 3 of 1967, requiring a thorough study of existing agencies and departments of the District of Columbia Government and the integration into new staff and operating departments of all functions of the organization to assure efficient and economical operations.

b. Planning, developing, directing and coordinating programs for improved management, such as: (1) effective use of automatic data processing systems and equipment; (2) survey and appraisal of departmental organizations and programs; (3) demographic and statistical studies and research; (4) paperwork management; (5) manpower utilization; and (6) related management activities.

2. There are hereby transferred to the Management Office the functions, including the duties, powers and authorities of all officers and employees assigned to the Management Office as it existed immediately prior to the effective date of this Order.

3. All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the above functions are hereby transferred to the Management Office.

B. *Budget Office.*

1. The Budget Office is responsible for:

a. Assisting and advising the Commissioner and the heads of the departments and offices in the development and implementation of improved budgetary policies, practices, and procedures; administering central internal budgetary coordination and control for the D.C. Government; analyzing budget requests and recommending

specific budget estimates which adequately meet program and performance requirements; preparing the budget for the District Government as approved by the Commissioner and the District of Columbia Council and assisting and participating in the presentation of budget estimates and justifications before the Bureau of the Budget and appropriations committees of the Congress.

b. Developing and preparing for consideration by the Commissioner, policies, procedures, and practices governing the preparation and administration of the budget in the D.C. Government.

c. Advising and assisting the departments and offices in the preparation of budget estimates and supporting data.

d. Analyzing budget estimates prepared by the departments and offices to insure that they properly reflect the financial requirements of the D.C. Government, and assisting in the presentation of such estimates before the Commissioner.

e. Advising and assisting the Commissioner in determining all D.C. Government budget estimates.

f. Preparing the budget estimates for the District Government as approved by the Commissioner and Council.

g. Arranging for and participating in the presentation of budget estimates at hearings before the Congressional appropriations committees.

h. Serving as liaison between the D.C. Government and the Bureau of the Budget and the appropriations committees on budgetary matters.

i. Maintaining budgetary controls over funds appropriated to the D.C. Government, including the making of apportionments of appropriations or changes therein, and the establishment of budgetary and administrative reserves. The actions of the Budget Officer in making apportionments of appropriations or changes therein will be reviewed by the Commissioners.

j. Prescribing systems of records and reports for budget purposes.

k. Receiving and compiling the annual, supplemental and deficiency budget estimates for the District of Columbia.

l. Advising as to anticipated D.C. revenues and the availability of such revenues for general, special, and trust fund purposes.

m. Advising as to proposed legislation involving revenues and expenditures, by cooperation with the Corporation Counsel and other interested officials.

n. Preparing budgetary reports as required by the Commissioner, the Budget Bureau and the Congress; preparing such other budgetary reports as may be required for internal administrative use.

o. Preparing the Financial and Statistical Report which is a supplement to the Annual Report of the District of Columbia.

p. Establishing accounting standards for the District Government and developing an overall system of accounting to reflect the assets and liabilities and financial operations of the District of Columbia; advising and assisting departments and agencies in developing and installing internal accounting systems, including systems for the measurment of costs, in conformance with and auxiliary to the overall system of accounting.

2. There are hereby transferred to the Budget Office the functions, including the duties, powers and authorities of all officers and employees assigned to the Budget Office as it existed immediately prior to the effective date of this Order.

3. All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the above functions are hereby transferred to the Budget Office.

C. *Personnel Office.*

1. The Personnel Office is responsible for:

a. Assisting and advising the Commissioner with respect to the promotion of outstanding public service by the District Government, the achievement of efficiency and economy, and the development of high employee competence and enthusiasm; insuring equal employment opportunity; working with the departments to develop personnel policies and programs; giving staff advice and assistance to the Commissioner and to the departments on personnel matters.

b. With respect to all departments of the District of Columbia Government, but consistent with the authority vested by law in the Commissioner, D.C., developing and administering all aspects of a complete personnel management program, including, but not limited to, those relating to position classification, pay administration; employment and placement; separations; training; employee relations; employee management cooperation; performance evaluation; safety; disability compensation; equal employment opportunity programs; special economic opportunity programs; retirement; incentive awards; records and reports. With respect to the responsibility assigned herein the Personnel Officer is delegated specific authority to:

(1) Classify all positions up to and including GS–15.

(2) Classify all wage board positions including the revision and modification of the wage board pay and evaluation systems.

(3) Approve, on recommendations by the appropriate department or agency head, all personnel actions involving positions up through grade GS–13 and the equivalent, including all wage board positions; all medical officer positions through grade GS–15 under the Director of Public Health; positions in the uniformed forces of the Police and Fire Departments through the rank of Captain; and all other personnel actions except appointments, promotions, and disciplinary and adverse actions involving (a) positions at grade GS–14 and above; (b) positions of heads of departments and agencies, regardless of grade level; and (c) positions in the uniformed forces of the Police and Fire Departments above the rank of Captain.

(4) Establish rates of pay for and approve appointments of experts and consultants.

(5) Establish special rates of pay such as stipends for employees under Public Law 330, 80th Congress, rates for students under the college work-study program (Title IV C of Public Law 329, 89th Congress), and rates for employees or individuals coming under the provisions of economic opportunity programs or other programs where generally no formal pay plans exist.

(6) Classify all positions in the Federal City College and Washington Technical Institute coming under the salary provisions of the administrative salary schedules and faculty salary schedules.

(7) Promulgate and interpret, on behalf of the Commissioner, personnel policies, procedures and related instructions and amendments thereto through the medium of the District Personnel Manual or special issuances, except that all major policy determinations or changes, as determined by the Personnel Officer, which are not required by any law or U.S. Civil Service Commission regulation, shall be subject to clearance with the Commissioner (or his designee) prior to issuance by the Personnel Officer.

(8) Classify or reclassify positions subject to the Teachers' Salary Act, as amended, and specify those positions to be brought under or removed from the coverage of such Act.

(9) Determine which positions in the Police and Fire Departments are subject to the D.C. Police and Firemen's Salary Act, as amended, and, with the cooperation of the Chief of Police and the Fire Chief, as appropriate, classify or reclassify on the basis of the difficulty, responsibility and qualification requirements all positions in the uniformed forces subject to such Act.

c. Serving in an advisory capacity in all personnel matters to the Commissioner and the various departments and agencies of the D.C. Government.

2. The Personnel Officer may redelegate in whole or in part to heads of departments and agencies the functions and the duties set forth in subsection 1 of Section C of this Part IV.

3. There is hereby established a District of Columbia Wage Scale Board, consisting of the Personnel Officer as Chairman and other members to be appointed by the Personnel Officer, D.C., as the need arises, including: one departmental representative from each of the six departments having the largest number of wage board employees, and employee representatives to be selected from among the various departments. The function of such Board shall be to advise the Commissioner as to the wage rates that should be paid those employees authorized by law to be employed under wage board procedures. Subsequent to

approval by the Commissioner, the Personnel Officer shall issue wage schedules or orders necessary to place such rates into effect.

4. There are hereby transferred to the Personnel Office the functions, including the duties, powers and authorities of all officers and employees assigned to the following agencies, divisions and sections as they existed immediately prior to the effective date of this Order:

Office of the Personnel Officer
Employment and Training Division
Classification Division
Salary and Wage Division
Board of Appeals on Wage Board Positions
D.C. Wage Scale Board

5. All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the above functions are hereby transferred to the Personnel Office.

* * * * *

D. *The Secretariat.*

1. The Secretariat is responsible for:

a. Performing ministerial duties for the Commissioner; maintaining official records relieving the Commissioner of the burden of taking, in the name of the District Government, action in such matters as the Commissioner shall from time to time specifically determine.

b. Preparing and issuing Commissioner's Orders, proclamations, directives, administrative issuances to heads of departments and statements to the public and press.

c. Maintaining official records of Commissioner actions in appropriate form, including orders, letters sent, and approved legal opinions.

d. Maintaining mailing lists of citizens and other groups interested in the civic affairs of the District.

e. Handling for the Commissioner a wide variety of complaints and inquiries made by the public by letter, telephone, or personal visits in such manner as will best conserve the time of the Commissioner.

f. Maintaining a follow-up system to insure compliance with Commissioner's decisions and directives by heads of all departments and offices of the District Government.

g. Acting for the Commissioner in carrying out the provisions of Section 4(c)(2) of the District of Columbia Unemployment Compensation Act as amended by Public Law 721, 83rd Congress, approved August 31, 1954.

h. Maintaining general files on all categories of records pertinent to the actions of the Commissioner.

i. Attesting to the authenticity of official records.

j. Serving as sole custodian of the Seal of the District of Columbia and being responsible for its proper use.

k. Being responsible for the publication, storage, sale and distribution of all codes, maps, regulations and amendments thereto including accountability for the D.C. Publications Fund, affecting the general public and maintaining of such codes, maps, regulations and amendments thereto, in a form readily accessible to the public.

2. There are hereby transferred to The Secretariat the functions enumerated in Subsection 1 of Section D of this Part IV, including the duties, powers and authorities of all officers and employees performing such functions and assigned to the Office of the Secretary as it existed immediately prior to the effective date of this Order.

3. All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the functions enumerated in Subsection 1 of Section D of this Part IV are hereby transferred to The Secretariat.

PART V

Revocations and abolitions.—Reorganization Orders of the former Board of Commissioners, Numbers 3 (Department of General Administration, August 28, 1952, as amended), 8 (Management Office, September 25, 1952, as amended), 21 (Personnel Office, November 20, 1952, as amended), 24 (Budget Office, December 30, 1952, as amended), 124 (Public Affairs Office, October 22, 1959, as amended), and 40 (Executive Office of the Board of Commissioners, June 23, 1953) are hereby revoked and the departments, offices and officers which were established thereby are abolished, subject to such measures and dispositions made by the Bureau of the Budget pursuant to Section 502 of Reorganization Plan No. 3 of 1967. All other Reorganization and Organization Orders of the former Board of Commissioners, or parts thereof, to the extent that they are inconsistent with this Order, but only to that extent, are hereby revoked.

PART VI

Effective date.—The provisions of this Order shall be effective on December 13, 1967.

ORGANIZATION ORDER NO. 3 (Amendment No. 1).—DEPARTMENT OF GENERAL ADMINISTRATION

(Organization Ord. No. 3, Commissioner's Order No. 67-24, Dec. 13, 1967, as further amended June 6, 1968, and Dec. 26, 1968.) See also Org. Ord. No. 9.

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, *It is ordered that* Organization Order No. 3 dated November 3, 1967 is hereby amended and reissued in its entirety to read as follows:

PART I

Department of General Administration.—There is hereby established under the direction and control of the Commissioner of the District of Columbia, a Department of General Administration, headed by a Director of General Administration. The Commissioner shall have full authority over such Department and Director and over all personnel assigned to such Department. There is hereby transferred to the Department of General Administration all employees assigned to the Department of General Administration as it existed immediately prior to the effective date of this Order and not otherwise assigned by this or any other organization order.

PART II

Purpose.—The Department of General Administration is established for the purpose of providing such administrative, auditing, financial and procurement assistance as may be required in the administration of the Government of the District of Columbia.

PART III

Organization.—There are hereby established in the Department of General Administration (1) an Administrative Services Office, headed by an Administrative Services Officer, (2) an Internal Audit Office, headed by an Internal Audit Officer, (3) a Finance Office, headed by a Finance Officer, (4) a Procurement Office, headed by a Procurement Officer, and (5) such other organizational components and positions with such duties and titles as the Commissioner shall from time to time determine.

PART IV

Functions.—A. *Administrative Services Office.*

1. The Administrative Services Office is responsible for:

a. Assisting and advising the Director, Department of General Administration, with respect to promoting maximum efficiency in the performance of various housekeeping functions common to departments and offices in conformance with policies of the Commissioner.

b. Performing, reviewing or making recommendations for furnishing printing, duplicating, binding, blueprinting, photostating, microfilming, and selecting necessary equipment therefor.

c. Providing a mail and messenger service which shall receive and dispatch mail as assigned and installing and operating such internal mail and messenger system as may be authorized by the Commissioner after study.

d. Reviewing space needs, except public space, and submitting reports and recommendations for assignments to the Director of General Administration (and to the Commissioner when appropriate) and executing control of approved assignments. Coordinating moving of office and other equipment in consequence of space assignments or reassignments by the Commissioner which shall include, among others, such matters as fixing the date of moving, and insuring public notice thereof where necessary. Departments and offices having facilities for assisting in the performance of such moving shall, upon request of the Administrative Services Officer, contribute them to such purpose to the limit of their capabilities.

e. Reviewing and promoting the most effective assignment of office equipment and establishing its useful life for purpose of replacement.

f. Maintaining records of the assignment of all District-owned passenger carrying vehicles, except those assigned to the Police and Fire Departments, and continually studying the utilization of them for the purpose of recommending reassignment or retirement.

g. Maintaining complete records of space allotted to District employees for parking privately owned motor vehicles on District or Federally owned property, reviewing requests for and making recommendations for assignments and executing control of approved assignments.

h. Developing and executing a complete program for property administration covering real and personal property of the District Government, performing the work on a centralized basis for real property, but developing and supervising an effective decentralized program for personal property. This program shall include the acquisition of real property, except condemnation proceedings and dedications of streets, alleys, etc.; outleasing and disposition of real property; demolition of abandoned or condemned structures on District Government land; sale or disposition of unserviceable, surplus or trade-in equipment and scrap material; acquisition and distribution of surplus property for educational, public health, civil defense and other purposes authorized by law; and inventory control procedures. Supplementing but excluded from jurisdiction of the program are the fiscal control accounts required in the chief accountant's office for purposes of effective internal controls.

2. There are hereby transferred to the Administrative Services Office the functions enumerated in Subsection 1 of Section A of this Part IV, including the duties, powers and authorities of all officers and employees assigned to the following agencies, divisions and sections as they existed immediately prior to the effective date of this Order:

Office of the Administrative Services Officer
Educational Surplus Property Division
Printing and Reproducing Division
Real Estate Division
Personal Property Utilization Division
Business Management Division

3. All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the functions enumerated in Subsection 1 of Section A of this Part IV are hereby transferred to the Administrative Services Office.

B. *Internal Audit Office.*

1. The Internal Audit Office is responsible for:

a. Assisting and advising the Director, Department of General Administration, with respect to developing and maintaining a system for the continuous or periodic examinations of the accounts and financial practices of the District of Columbia Government to the end that the Commissioner, the Director of General Administration, and the various department and office heads will be informed as to the currency, accuracy, and integrity of financial accounts and records in conformance with policies of the Commissioner.

b. Verifying transactions and balances pertaining to income, expenditures and transfer of all appropriated funds, special limitations imposed by Congress, special and trust funds, and allotments to the extent necessary to ascertain compliance with established laws, regulations, policies and procedures.

c. Preparing periodic reports relative to the conditions of the accounting systems, the propriety of operations and transactions, and any defalcations or other failures to account for funds.

d. Making specific recommendations for correcting deficiencies in the accounting systems, as these are revealed by either the continuous or the periodic audits.

e. Reviewing and appraising existing accounting policies and procedures in terms of their adequacy and effectiveness in controlling income, expenditures, funds, property and other assets, including costs, and in disclosing financial information to management at various levels.

f. Serving in an advisory capacity in matters pertaining to internal accounting and control.

g. Pursuant to the provisions of Public Law 561, 85th Congress, 2d Session, approved July 28, 1958, serving as the designated agent of the Commissioner in certifying as to the accuracy of the financial statement required of the Armory Board by Section 10 of the District of Columbia Stadium Act of 1957.

h. Acting for the Director of General Administration, coordinating with District departments concerned, all audit reports submitted by the General Accounting Office in their review of District Government activities.

2. There are hereby transferred to the Internal Audit Office the functions, including the duties, powers and authorities of all officers and employees assigned to the Internal Audit Office as it existed immediately prior to the effective date of this Order.

3. All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the above functions are hereby transferred to the Internal Audit Office.

C. *Finance Office.*

1. There are hereby established in the Finance Office, under the supervision and direction of the Finance Officer, the following organizational components:

Office of the Finance Officer
Property Tax Division
Revenue Division
Treasury Division
Accounting Division
Data Processing Division
Board of Equalization and Review

2. The Finance Office is responsible for:

a. Assisting and advising the Director of the Department of General Administration and where appropriate the Commissioner with respect to administering the laws and regulations relating to taxes, fees, and assessments; collecting and depositing all revenues of the District of Columbia in appropriate depositories and monitoring appropriate accounts relating thereto; maintaining centralized general ledger and appropriation accounts and controls reflecting the assets and liabilities and financial operations of the District of Columbia, and allotment accounts for control of funds available for expenditure, and preparing necessary accounting reports and financial statements thereon; and preauditing certifying and properly disbursing District of Columbia funds.

b. *Office of the Finance Officer:*

(1) Developing and proposing to the Director of General Administration and where appropriate the Commissioner major programs, policies and procedures on all taxation and fiscal matters within the purview of the Finance Office's functions.

(2) Being responsible for overall administration execution, and interpretation of the applicable laws and regulations relating to taxation and finance within the purview of the Finance Office's functional responsibility and scope of operations.

(3) Planning the programs and prescribing the policies of the Finance Office and planning, directing, coordinating and supervising its activities in accordance with the overall policies of the Department of General Administration.

(4) Reviewing proposed plans and legislation relating to finance and revenue matters originating within the Finance Office or with the departments or agencies of the District of Columbia Government and consulting with and advising the Director of General Administration and the Commissioner in fiscal and revenue matters.

(5) Studying the fiscal system for the purpose of determining the economic consequences of the existing structure or alternate structures and developing overall fiscal research program including estimating tax revenue; preparing monthly, annual and special reports.

(6) Reviewing and approving or modifying assessments of real property prior to action by the Board of Equalization and Review; reviewing personal property assessments and administrative determinations of tax liability for all other taxes and taking appropriate action.

(7) When such action is warranted waiving interest or penalties, or both, on all taxes administered by the Finance Office other than special assessments. For those amounts in excess of the tolerance established by the Finance Officer, with the approval of the Director of

General Administration, for routine processing, billing and collecting of penalty and interest, maintaining appropriate records showing actions taken and reasons therefor.

(8) For those taxes other than real estate taxes administered by the Finance Office, making final determinations on all requests for tax exemption in accordance with applicable laws, regulations, and Corporation Counsel opinions; and maintaining appropriate records showing actions taken and reasons therefor.

(9) For those taxes administered by the Finance Office, making final determinations on all offers in compromise for settling tax liability; and maintaining appropriate records showing actions taken and reasons therefor. In those cases where litigation is pending or where no legal precedent has previously been established but legal advice is necessary or desirable, consulting with the Corporation Counsel.

(10) Administering as agent of the Commissioner of the District of Columbia, the provisions of Public Law 85–558, 85th Congress, 2d Session, approved July 25, 1958 (D.C. Code, Sec. 25–124).

(11) Certifying to the Secretary of the Treasury amounts requested to be restored from lapsed appropriations as being necessary for the payment of audited claims under such appropriations and, provided, the D.C. Budget Office shall be informed of all such amounts certified, pursuant to the provisions of Section 14, District of Columbia Appropriation Act of 1959, approved August 6, 1958.

(12) Except as to such duties and functions as are performed in conjunction therewith by the Recorder of Deeds, D.C., administering, as agent of the Commissioner, the provisions of Title III of Public Law 87–408, 87th Congress, approved March 2, 1962.

c. *Property Tax Division:*

(1) Valuing all real estate, taxable and exempt, and all taxable tangible personal property for assessment purposes.

(2) Making studies of property values and developing appraisal standards and techniques.

(3) Conducting sales ratio studies and determining depreciation and obsolescence factors.

(4) Preparing and maintaining tax maps and other necessary records.

(5) Approving the levying of all special assessments against real estate as provided by law and regulations; assessing rents for vault space upon information furnished by the Director of Highways; and, upon written notification from the Director of Licenses and Inspections, the Director of Public Health, or the Board for the Condemnation of Insanitary Buildings, that a nuisance has been abated or an illegal or insanitary condition has been corrected, as the case may be, including a statement of the exact cost of such abatement or correction, recording proper assessment and rendering bills thereon as provided by law.

(6) Administering real estate tax sales.

(7) Performing such incidental duties as may be necessary for the proper performance of the functions assigned.

d. *Revenue Division:*

(1) Developing and conducting audit programs and determining extent of tax liability in connection with the administration of income and franchise, sales, use and excise, inheritance and estate and other related taxes.

(2) Developing and conducting investigation and compliance programs and determining extent of tax liability in connection with the aforesaid taxes.

(3) Conferring with taxpayers with respect to protests of proposed assessments.

(4) Administering and executing the licensing requirements of the tax laws and regulations administered by the Finance Office.

(5) Performing such incidental duties as may be necessary for the proper performance of the functions assigned.

e. *Treasury Division:*

(1) Collecting revenues of the District of Columbia, accounting for and distributing all collections into appropriate revenue accounts, and depositing with the Treasurer of the United States all funds so received.

(2) Making disbursements in accordance with law and regulations, in cash or by checks drawn on the Treasurer of the United States, based on vouchers and payrolls duly certified by a designated certifying officer, and being accountable therefor.

(3) Being responsible for all balances with the United States Treasury.

(4) Dispensing and accounting for tax stamps.

(5) Being responsible for the custody of trust fund securities.

(6) Conducting programs relating to the enforcement of collections of delinquent taxes, referring to the Corporation Counsel those accounts requiring court action.

(7) Conducting investigations and taking such action as is provided by law to enforce collection of delinquent and unpaid tax accounts, including the filing of liens and the seizure of goods and chattels and the public or private sale of same.

(8) Conferring with other jurisdictions with respect to reciprocal agreements on tax matters, and making appropriate recommendations to higher authority.

(9) Selling at private sale all goods and chattels seized for nonpayment of District taxes when the highest bid offered therefor at public auction is not sufficient to meet the amount of taxes, penalties and costs due thereon; and defraying the cost of advertising, handling, auctioneer's fee and other expenses incidental to the holding of such sale, from the proceeds therefrom.

f. *Accounting Division:*

(1) Maintaining centralized general ledger accounts and controls reflecting the assets and liabilities and financial operations of the District of Columbia, and establishing and maintaining allotment accounts for control of funds available for expenditure.

(2) Maintaining accounting records for, preparing, and certifying payrolls.

(3) Preauditing and certifying the correctness and propriety of obligations and expenditures.

(4) Maintaining records and reports and performing duties pertinent to retirement administration and accounting, the Federal Employees Life Insurance program, and United States savings bond accounting.

(5) Compiling and preparing accounting information and reports for the purpose of reflecting the financial status and condition of the District Government or any of its parts.

(6) Reviewing requests for official travel by all District offices and employees as to form and authority, issuing transportation requests and instructing travelers and departments in the requirements of the travel regulations and Commissioner's travel policies.

g. *Data Processing Division:*

(1) Utilizing electronic data processing systems and related equipment performing centralized data processing operations for the Finance Office including but not limited to tax accounting and payroll programs.

(2) From time to time performing automatic data processing services for the departments and agencies of the District of Columbia based on the needs and requirements of such departments and agencies and the Division's schedule of operations.

(3) Performing such other related duties as may be necessary for the proper performance of the functions assigned.

3. *Board of Equalization and Review:*

a. There is hereby established in the Finance Office, a Board of Equalization and Review composed of the Finance Officer, who shall act as Chairman, and two or more persons who are conversant with real estate values in the District of Columbia, to be designated by the Finance Officer, with the approval of the Director of General Administration. The Chairman may designate an alternate Chairman to serve in his stead.

No person appointed from the general public shall sit as a member of the Board to hear complaints or appeals against real estate assessments which involve property in which said person, through owning, selling, acting as an agent or otherwise, has a personal interest.

b. The Board shall formulate rules of procedures for the conduct of its affairs. Any three members of said Board meeting at the call of the Chairman shall constitute a quorum.

c. The functions to be performed by the Board of Equalization and Review shall include but not be limited to the following:

(1) Reviewing and equalizing real estate assessments in the manner prescribed by law.

(2) Hearing complaints against real estate assessments and taking appropriate action in the manner prescribed by law.

(3) Transmitting equalized assessments to the Commissioner for approval as prescribed by law.

4. *Committee on Special Assessment Appeals.*—There is hereby established a Committee on Special Assessment Appeals, such Committee to comprise an Assistant Corporation Counsel designated by the Corporation Counsel, the Finance Officer, and an official of the Finance Office to be designated by the Finance Officer. The Assistant Corporation Counsel shall be Chairman of the Committee.

The Committee is hereby delegated the following authorities and its decisions thereon shall be final: (a) abating, reducing, or adjusting special assessments due the District of Columbia in accordance with its findings; and (b) waiving, in whole or in part, interest or penalties, or both, on special assessments due the District of Columbia.

5. There are hereby transferred to the Finance Office the functions, including the duties, powers and authorities of all officers and employees assigned to the following agencies, divisions and sections as they existed immediately prior to the effective date of this Order.

Office of the Finance Officer
Property Tax Division
Revenue Division
Treasury Division
Accounting Division
Data Processing Division
Board of Equalization and Review

6. All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available to or to be made available relating to the above functions are hereby transferred to the Finance Office.

D. *Procurement Office.*

1. The Procurement Office is responsible for:

a. Assisting and advising the Director of the Department of General Administration and where appropriate the Commissioner with respect to obtaining the maximum advantages of centralized purchasing and developing, installing, and supervising effective and simplified purchasing policies and procedures for departments and offices of the District of Columbia Government.

b. Purchasing, in accordance with such instructions as the Director of General Administration may from time to time give, surplus and excess Federal personal property for departments and officers of the District of Columbia Government.

c. Initiating and developing, in collaboration with departments and offices, up-to-date and effective purchasing policies and programs for consideration by the Director of the Department of General Administration and where appropriate the Commissioner.

d. Creating and adopting, subject to the approval of the Director of General Administration, the most simplified purchasing procedures in the interest of economizing on administrative costs and expediting action.

e. Preparing periodic economic reports dealing with the field of purchasing, and furnishing estimated price data when requested by the Budget Officer, D.C., preparing such other reports as required for internal administrative use or requested by the Director of General Administration.

f. Serving in an advisory capacity to the Commissioner, the Director of General Administration, and department and office heads in matters pertaining to purchasing and contracting.

g. Conducting a continuous program of analysis, appraisal, and cataloging of materials and supplies procured for District departments and offices in the interest of standardization and economy. Keeping informed on new products manufactured and technological changes and improvements in manufacturing processes, and, on the basis of such information considering, in collaboration with using agencies, alternate or substitute materials.

h. Furnishing and certifying as true, copies of contracts, bonds, and other documents which are in the official custody of the Procurement Office upon application and payment, by persons other than officials of the District of Columbia, of such fees as may be established by the Government of the District of Columbia.

i. Administering all functions dealing with the bonding of District employees for faithful performance of their official duties, including the fixing of penal sums of bonds wherein such bonding is dictated by existing laws, regulations, Commissioner's Orders, and other elements consistent with the public interest. Creating and adopting the most economical and simplified system and procedures for administering all matters connected therewith.

2. There are hereby transferred to the Procurement Office the functions, including the duties, powers and authorities of all officers and employees assigned to the following agencies, divisions and sections as they existed immediately prior to the effective date of this Order:

Office of the Procurement Officer
Requirements Division
Technical Buying and Negotiated Services Division
Bid and Contract Division
General Buying Division
Supply Programming Division
Contract Advisory Committee

3. All positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available or to be made available relating to the above functions are hereby transferred to the Procurement Office. (See part VII of Org. Ord. 9.)

PART V

Revocations and Abolitions.—The Organization Orders of the former Board of Commissioners Number 3 (Department of General Administration, August 28, 1952, as amended), 18 (Administrative Services Office, October 23, 1952, as amended), 19 (Internal Auditor Office, November 10, 1952, as amended), 121 (Finance Office, December 12, 1957, as amended), and 29 (Procurement Office, September 17, 1952, as amended), are hereby revoked and the departments, offices and officers which were established thereby are abolished. All other Reorganization and Organization Orders of the former Board of Commissioners, or parts thereof, to the extent that they are inconsistent with this Order, but only to that extent, are hereby revoked.

PART VI

Effective date. The provisions of this Order shall be effective on December 13, 1967.

ORGANIZATION ORDER NO. 4

This Org. Ord. dated Nov. 3, 1967, is an amendment of Reorg. Ord. No. 50; see that order, *supra.*

ORGANIZATION ORDER NO. 5

This order dated Nov. 3, 1967, is an amendment of Org. Ord. No. 127; see that order, below.

ORGANIZATION ORDER NO. 6.—BOARD OF PAROLE

(Organization Ord. No. 6, Commissioner's Order No. 67–95, Dec. 26, 1967.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, *It is ordered that:* Reorganization Order No. 33, dated May 28, 1953, as amended, is hereby redesignated Organization Order No. 6 and amended to read as follows:

PART I

Board of Parole.—There is hereby established in the Government of the District of Columbia a Board of Parole, headed by a Chairman. The supervisory responsibility of the Commissioner for the activities of the Board of Parole shall be exercised by the Commissioner or his designee.

PART II

Purpose.—The Board of Parole is established to: determine if and when it is in the best interest of society and

the offender to release him into the community on parole or on conditional release in the case of committed young offenders; determine the terms and conditions of such parole or release; determine, in collaboration with the Department of Corrections, standards of supervision for persons on parole or conditional release; and determine if and when to terminate a parole or conditional release or to modify the terms or conditions thereof.

PART III

Composition and membership.—The Board of Parole shall consist of three members who shall be appointed by the Commissioner. Persons appointed to membership on the Board of Parole shall be selected on the basis of their broad experience in responsible positions in the fields of correctional service, rehabilitation, law, or education in related fields of behavioral sciences.

PART IV

Chairman, Board of Parole.—A. The Chairman and Vice Chairman of the Board of Parole shall be designated by the Commissioner.

B. The Chairman shall preside at meetings of the Board of Parole, and provide for and supervise the administrative and ministerial activities and personnel of the Board.

C. The Chairman shall insure that all Board policies, plans, rules, and standards are coordinated with the Director of Corrections in order to provide for an effective and integrated correctional system and for continuity of treatment and training of offenders, geared to their readjustment as productive and useful members of society.

PART V

Functions.—1. Develops and recommends to the Commissioner major parole policies, including necessary legislation.

2. Advises and assists the Commissioner or his designee on parole matters, and represents him in coordinating parole policies or standards of the District of Columbia with those of Federal, State and local jurisdictions or other organizations.

3. Establishes standards governing the release of prisoners on parole or committed young offenders on conditional release, terms and conditions of such parole or release, standards of supervision (in collaboration with the Department of Corrections) for persons on parole or conditional release, and standards respecting violation and termination of parole or release.

4. Administers the parole laws applicable to the District of Columbia in regard to determining when to release prisoners on parole or to conditionally release committed youth offenders, setting the terms and conditions of parole or release, revocation or modification of parole or conditional release, subject to the approval of the District of Columbia Council, promulgation of rules and regulations permitting the discharge of parolees from supervision prior to the expiration of the maximum terms for which they were sentenced, recommending to the Courts, where applicable, a reduction in minimum sentences, and issuing warrants for the return of a parolee, conditional releasee, or good time releasee for failure to abide by the conditions of his release.

5. Conducts hearings and rehearings on all prisoners when eligible for parole and on all committed youth offenders when eligible for conditional release.

PART VI

Board decisions.—1. A quorum shall consist of any two members of the Board present and voting.

2. All decisions regarding approval, denial or revocation of parole shall be by majority vote of the Board.

PART VII

Term of office.—The term of office for the three Board members shall be for six years except for initial appointments which will be as follows: one shall be appointed for two years, one for four years and one for six years. Should a vacancy occur through the death, incapacity, resignation, or removal of a member, a successor shall be appointed to complete the unexpired term of that member. After the expiration of his term each member shall continue to serve until he is reappointed or his successor is appointed.

PART VIII

Repeal of previous orders.—All Orders and parts of Orders of the former Board of Commissioners or Orders or parts of Orders of the Commissioner in conflict with any of the provisions of this Order are, to the extent of such conflict, hereby repealed, but nothing in this Order shall in any way alter, amend or repeal any District regulation adopted or promulgated by the former Board of Commissioners or by the District of Columbia Council.

PART IX

Effective date.—This Order shall become effective on and after December 27, 1967.

ORGANIZATION ORDER NO. 7.—DEPARTMENT OF CORRECTIONS

(Organization Ord. No. 7, Commissioner's Order No. 67-94, Dec. 26, 1967 as further amended Jan. 12, 1970.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, *It is ordered that:* Organization Order No. 154, dated February 7, 1967, is hereby redesignated Organization Order No. 7 and amended to read as follows:

PART I

Department of Corrections.—There is hereby established in the Government of the District of Columbia a Department of Corrections, headed by a Director of Corrections. The supervisory responsibility of the Commissioner for the activities of the Department shall be exercised by the Commissioner or his designee.

PART II

Purpose.—The Department of Corrections is established to: safeguard the community and its people through control and protection of persons assigned to the Department's custody; care for such persons by providing them, as required by law, with food, clothing, shelter, medical care, and other necessities; improve the attitudes, behavior and capabilities of inmates through appropriate supervision, treatment, training, work, recreation, and related activities; and provide supervision, counseling, guidance and other assistance to inmates, conditionally released committed young offenders and parolees in readjusting themselves as useful members of society.

PART III

Director of Corrections.—A. The Director of Corrections shall be responsible for carrying out the purposes set forth in Part II herein, including the planning, development, and operation of an integrated correctional system, with necessary institutions and facilities, for accomplishing these purposes. On matters related to parole policies, plans, rules and standards, the Director shall insure that all Departmental activities are coordinated with the Board of Parole. On matters of primary importance to the activities of the Department, the Director shall consult with the Commissioner or his designee.

B. The Director, with the approval of the District of Columbia Council, shall have power to promulgate rules and regulations for administering the institutions and facilities of the Department, and is authorized to establish and conduct industries, farms, work release, community and residential programs and other activities for the employment, training or welfare of the inmates, including the operation of canteens for the purpose of selling merchandise to inmates and employees of the Department at a nominal profit; such profits shall be deposited in the Inmate Welfare Fund, and shall be used in the discretion of the Director for the general welfare of the inmates.

C. The Director shall direct and control the activities of the Department. Except as otherwise provided in this Order, and subject to applicable laws, rules, regulations, Commissioner's Orders and directives issued pursuant to Commissioner's Orders he shall have full authority over the Department and all functions, personnel, facilities and resources assigned to it. This includes authority to redelegate authority and assign personnel in such manner as in his judgment is necessary to establish and maintain effectiveness and efficiency of operations.

D. The Director of the Department of Corrections, in the performance of functions for which he is responsible, is hereby authorized to establish such organizational components thereunder with such specified functions as he deems appropriate. The major organizational components and functions described in Part IV herein shall remain in effect until such time as the Director may otherwise order.

PART IV

Organization and functions.—The Department of Corrections shall comprise the following major organizational components in which responsible personnel shall perform the functions described.

A. *Office of the Director.*

1. Directs the development of, and recommends to the Commissioner, major correctional policies and programs, including necessary legislation and budgetary requirements.

2. Advises and assists the Commissioner on correctional matters, and represents him in coordinating correctional activities of the District of Columbia with those of Federal, State and local jurisdictions or other organizations.

3. Informs the public concerning Department activities.

4. Provides advisory services to other District agencies on correctional matters.

B. *Associate Director for Planning and Research.*

1. Under general administrative supervision of the Director, maintains liaison with Federal, State and local jurisdictions or other organizations on matters related to the Department's interests, including negotiation of agreements with such jurisdictions or organizations.

2. Performs, or coordinates the performance of, research and statistical studies conducted in, by, or for the Department, including negotiation and administration of contracts or other arrangements for research.

3. Performs, or coordinates the performance of, the planning and development of new or modified programs, organizations, systems (including automatic data processing systems), and standards.

4. Appraises existing and proposed correctional, industrial and administrative programs, organizations and systems, including objectives, policies, priorities and budgetary requirements, in order to evaluate the effectiveness and efficiency of their performance; monitors, on a sampling basis, the programs and progress of individual inmates.

5. Furnishes, upon request, technical advice and assistance to professional personnel in treatment, training, educational and related services.

6. Provides advice and assistance to the Director and other Department officials on matters related to correctional research, and the planning and development of an integrated correctional system, including necessary policies and legislation.

C. *Associate Director for Administration.*

1. Administers a comprehensive personnel management program, including position classification, recruiting, placement, training, employee development, employee-management relations, and related activities.

2. Administers a financial program, including coordination of preparation of budget estimates and justifications; develops and administers department-wide accounting policies, procedures, and standards; provides accounting services for the Department, including the Correctional Industries Fund; administers the Inmate Welfare Fund, inmate canteens, and inmate financial activities.

3. Provides information management and communications services, including maintenance and clerical or machine processing of records, reports and other data or statistics, and furnishes mail, messenger, telephone and radio services.

4. Administers procurement, supply, property management, and food management programs, including operation of warehousing facilities other than shop stores.

5. Administers a safety program.

6. Maintains liaison with the Executive Office on functions for which it is responsible.

7. Collaborates with the Associate Director for Planning and Research in developing or modifying programs in assigned areas of responsibility.

8. Provides technical advice and assistance to the Director and other officials on matters related to the personnel, fiscal, and other administrative management activities of the Department.

D. *Associate Director for Institutional Services.*

1. Administers departmental programs for the custody, care, development and assistance of inmates, including control, protection, evaluation, classification, treatment, training, education, health, recreation and related activities.

2. Supervises and coordinates the activities of the correctional institutions under the jurisdiction of the Department, including inspection of facilities and investigation of inmate complaints.

3. Collaborates with the Associate Director for Planning and Research in the development or modification of programs within his area of responsibility.

4. Provides advice and assistance to the Director and other officials on matters related to the behavior and supervision of inmates, the operation of inmate programs, and the management of institutions.

E. *Associate Director for Industrial Services.*

1. Administers the construction, maintenance, and operation of buildings, public works, fixed and mobile equipment, and land of the Department; administers the Department's activities in the District of Columbia Six-Year Capital Improvement Program.

2. Administers the production, marketing and distribution of goods and services in industrial-type operations of the Department, and the trades training associated with them, including manufacturing, transportation, engineering, agriculture, and service trades; administers the Correctional Industries Fund.

3. Collaborates with the Associate Director for Planning and Research in the development or modification of programs within his area of responsibility.

4. Provides technical advice and assistance to the Director and other officials on matters related to the operation and management of physical facilities, public works, equipment, real property and industrial activities of the Department.

F. *Associate Director for Community Services.*

1. Administers departmental parole programs and community and residential programs for inmates, including treatment, education, custody, care and related activities. The parole program includes conditional release and out-of-state supervision cases, committed youth offender released conditionally, as well as parole cases.

2. Coordinates community and residential parolee, conditionally released committed youth offender and inmate programs with Federal, State and local jurisdictions or private organizations, such as labor unions, trade associations, businesses and church and civic groups.

3. Collaborates with the Associate Director for Planning and Research in the development or modification of programs within his area of responsibility.

4. Provides advice and assistance to the Director and other officials on matters related to the behavior, and supervision of parolees, conditionally released youth offenders, and inmates assigned to community or residential programs, the operation of community and residential programs, and the management of facilities and centers assigned to such programs.

PART V

Repeal of previous orders.—All Orders and parts of Orders of the former Board of Commissioners or Orders or parts of Orders of the Commissioner in conflict with any of the provisions of this Order are, to the extent of such conflict, hereby repealed, but nothing in this Order shall in any way alter, amend or repeal any District regulation adopted or promulgated by the former Board of Commissioners or by the District of Columbia Council.

PART VI

Effective date.—This Order shall become effective on and after December 27, 1967.

ORGANIZATION ORDER NO. 8.—DIRECTOR OF PUBLIC SAFETY [1]

(Organization Ord. No. 8, Commissioner's Order No. 68-290, Apr. 18, 1968, amended Aug. 26, 1968.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is ORDERED THAT:

PART I

Director of Public Safety.—There is hereby established, within the Executive Office of the Commissioner of the District of Columbia under the direction and control of the Commissioner, a Director of Public Safety.

PART II

Purpose.—The Director of Public Safety, as agent of the Commissioner, shall be responsible for directing and administering all functions assigned to the District of Columbia Police Department, the District of Columbia Fire Department, and the Office of Civil Defense and coordinating them with the District of Columbia Department of Corrections and the Board of Parole. In addition, the Director of Public Safety shall serve as a liaison between the aforementioned Departments, Office and Board, the courts of the District of Columbia and the United States Department of Justice.

PART III

Functions.—The Director of Public Safety is responsible for:

A. Developing and implementing major plans, programs, and policies for the District of Columbia Police Department and directing and controlling all police programs, services and operations in the District of Columbia. Coordinating these programs with those of the Department of Corrections and with other state and local criminal justice agencies in the Washington Metropolitan Area, and with the Federal Government.

B. Developing and implementing major plans, programs and policies for the District of Columbia Fire Department and directing and controlling all fire prevention and fire fighting programs, services and operations in the District of Columbia. Coordinating these programs with those of state and local fire prevention and fire fighting agencies in the Washington Metropolitan Area and with the Federal Government.

C. Developing and implementing major plans, programs and policies for providing civil defense and major disaster protective and relief measures within the District of Columbia. Coordinating these programs with those of other state and local civil defense agencies in the Washington Metropolitan Area and with the Federal Government.

D. Prescribing the workweek, hours of duty, days off, and holidays for officers and members of the District of Columbia Fire Department, including members of the Firefighting Division of that department.

The authority delegated herein shall not be exercised by any officer or employee of the Government of the District of Columbia, other than the Director of Public Safety, except upon the specific, written redelegation of such authority by the Director of Public Safety.

This order [Dated, Aug. 26, 1968, adding this par.] shall be effective immediately.

PART IV

Revocations and abolitions.—The Organization and Reorganization Orders of the former Board of Commissioners Numbers 31 (Police and Firemen's Retirement and Relief Board, April 30, 1953, as amended), 33 (Board of Parole, May 28, 1953, as amended), 38 (Fire Department, June 18, 1953, as amended), 39 (Fire Trial Boards, June 18, 1958, as amended), 47 (Board of Police and Fire Surgeons, June 26, 1953, as amended), 48 (Police Trial and Review Boards, June 26, 1953, as amended), 49 (Office of Civil Defense, June 26, 1953, as amended), 117 (Commissioners' Advisory Council on Fire Prevention, October 4, 1956, as amended), 118 (Emergency Ambulance Service Committee, August 27, 1957, as amended), 152 Supplement (Procedure for Investigation of Alleged Employee Wrongdoing, October 4, 1966), 153 (Metropolitan Police Department, November 10, 1966), 154 (Department of Corrections, February 7, 1967) and 155 (Correctional Advisory Council, February 7, 1967) to the extent that they are inconsistent with this Order, but only to that extent, are hereby revoked.

PART V

Effective date.—The provisions of this Order shall be effective April 18, 1968.

[1] ABOLITION OF OFFICE

Sec. 801, act Oct. 31, 1969, Pub. L. 91-106 provided: "The office of Director of Public Safety in the Executive Office of the Commissioner of the District of Columbia (created by Organization Order Numbered 8, dated April 18, 1968) is abolished. No funds appropriated for the government of the District of Columbia and no grant or loan by any department or agency of the United States Government to the government of the District of Columbia may be used to establish any similar office in the government of the District of Columbia to carry out any of the functions delegated to the Director of Public Safety by such order."

ORGANIZATION ORDER NO. 9.—CONTRACTING OFFICERS

(Organization Ord. No. 9, Commissioner's Order No. 68-399, June 6, 1968, as amended Dec. 4, 1968, and Apr. 24, 1969, Nov. 14, 1969.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, IT IS ORDERED:

Organization Order No. 9 of June 6, 1968, as amended, is hereby further amended and reissued in its entirety to read as follows:

PART I

Appointment of contracting officers.—A. The officials occupying each of the following positions are hereby appointed Contracting Officers for the District of Columbia, subject to all applicable laws, rules, regulations, policies, standards, systems and procedures, and such instructions as the Commissioner or his designee may from to time give:

(1) Director, Department of General Services;
(2) Director, Department of Highways and Traffic;
(3) Director, Department of Sanitary Engineering;
(4) Director, Department of Economic Development;
(5) Chairman of the Board for the Condemnation of Insanitary Buildings;
(6) Director, Department of Public Health;
(7) Director, Department of Vocational Rehabilitation;
(8) Director, Department of Corrections; and
(9) Director, Department of Public Welfare.

B. Each Contracting Officer is authorized to redelegate such of the authorities herein delegated to him to other officials under his administrative control to act as Contracting Officers for such purposes and subject to such limitations as he may designate in writing, a copy of which writing shall be filed in his office and in the office of the Director of Finance and Revenue. The Contracting Officer designated in Part I, A(1) is authorized to redelegate portions of the authorities herein delegated to him to departments and agencies as in his judgment are warranted for reasons of administrative efficiency and effective management subject to such criteria, standards, and restrictions as he may determine.

PART II

Authority of contracting officers.—A. Each Contracting Officer is authorized to enter into and administer contracts and issue change orders under such contracts on behalf of the District of Columbia, including approval of performance bonds when required, as follows:

(1) The Contracting Officer designated in Part I, A(1) with respect to (a) all supplies, materials, equipment and services for all departments and agencies of the District except as provided elsewhere herein; (b) the acquisition by purchase of real property, demolition of improvements on real property, managing, inleasing, outleasing or disposing of real property, and the installation of snack bars and vending facilities on District-owned or leased properties; and (c) the sale of surplus personal property, supplies, equipment and scrap materials.

(2) Each Contracting Officer designated in Part I, A(1) through I, A(3) with respect to (a) consulting, architect-engineer and construction contracts (including alteration and repair) determined to be necessary for the proper performance of all types or classes of work now and hereafter placed under his supervision; and (b) supplies, materials or equipment, the furnishing of services, or the performance of construction, in amounts not exceeding $50,000 when the public exigencies require the immediate delivery, furnishing or performance of the same, PROVIDED that a certification as to the nature of the emergency and justification for such purchase or contract be made in writing and filed with the Contract Review Committee within seventy-two (72) hours after said purchase or award of said contract.

(3) The Contracting Officer designated in Part I, A (4) with respect to (a) taking down, removing or otherwise making safe unsafe structures or excavations in accordance with the Unsafe Structures Act of March 1, 1899, as amended, Sec. 5–501 to 5–508, D.C. Code, 1967 ed.; and (b) construction or installation of means of egress or other appliances in accordance with the provisions of the Means of Egress Act of December 24, 1942, Secs. 5–317 to 5–323, D.C. Code, 1967 ed.

(4) The Contracting Officer designated in Part I, A(5) with respect to repairs, changes or demolition and removal of insanitary buildings in accordance with the Act to Create a Board for the Condemnation of Insanitary Buildings of May 1, 1906, as amended, Secs. 5–616 to 5–631, D.C. Code, 1967 ed.

(5) The Contracting Officer designated in Part I, A(6) with respect to contract hospitals and medical vendors and services under the Medical Assistance Program for the District of Columbia (Medicare and Medicaid, Titles XVIII and XIX, Social Security Act).

(6) The Contracting Officer designated in Part I, A(7) only with respect to (a) services of a professional, technical and scientific nature provided by institutions or individuals to physically handicapped persons participating in the programs of the department; and (b) appliances or such other specialized items as may be peculiar to the vocational rehabilitation program.

(7) The Contracting Officer designated in Part I, A(8) only with respect to the sale to the various departments of the District of Columbia and Federal Governments, to any State or sub-division of a State, or any Commonwealth, Territory or possession of the United States, of products and services produced by the Industries Division of the Department of Corrections.

(8) The Contracting Officer designated in Part I, A(6) and Part I, A(9) with respect to construction and repair of District Government-owned buildings provided the building is under their exclusive control, and the amount of the contract does not exceed $5,000.00.

B. (1) All contracts and change orders shall be subject to the following:

(a) Certification by the Director of Finance and Revenue or his designee, that they are correct and proper for payment in the verified amount;

(b) Determination as to legal sufficiency in such manner as meets the requirements of the Corporation Counsel, D.C., and

(c) In the case of each contract in excess of $5,000,000, approval of the executed formal contract by the Commissioner or his designee.

(2) Bids, proposed contracts and proposed change orders coming within the criteria in Part IV (B) (1), (2), (3), and (4) shall be submitted to the Contract Review Committee for review and recommendations as provided in Part IV hereof.

C. (1) The Contracting Officer designated in Part I, A (1) is authorized to determine that capital outlay funds appropriated for public building construction services may be utilized to pay for services by architect-engineer contracts or by departmental personnel.

(2) Each Contracting Officer designated in Part I, A (1) through (3) is authorized to determine whether repair and improvements projects shall be performed under contracts or by department personnel (force account).

(3) The Director of Corrections, D.C., in collaboration with the Director, Department of General Services, or his designee, is authorized to determine the fair market prices to be charged by the Department of Corrections for products and services of the Industrial Enterprises of the D.C. Workhouse and Reformatory. Should the Director of Corrections and the Director of General Services fail to agree as to the fair market price of any such product or services, their respective recommendations, with reason therefor, shall be submitted to the Contract Review Committee for decision.

(4) Whenever 50 per centum of the work required under a contract for construction has been completed and payments therefor have been made, the Contracting Officer may authorize subsequent payments to be made to the Contractor without withholding from such subsequent payments 10 per centum thereof as required by Section 1–807, D.C. Code, 1967 ed. or the said Contracting Officer may authorize retention from such subsequent payments of less than 10 per centum thereof and whenever the work is substantially complete, the contracting officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the District of Columbia, may, in his discretion, release to the contractor all or a portion of such excess amount; and the said Contracting Officer may further authorize payment in full, including retained percentages for each separate building or public work on which the price is stated separately in the contract upon completion and acceptance of such building or work.

PART III

The Director of General Services.—The Director of General Services or his designee shall:

A. Collaborate with Contracting Officers in developing and implementing effective contracting procedures which are designed to expedite the work of the Contracting Officers.

B. Perform centralized services in connection with contract administration for departments and offices of the District of Columbia Government, such as advertising for competitive bids, opening and tabulating bids, preparing formal contracts and bonds after awards are made by the authorized Contracting Officer, and assisting in the preparation of all types of contractual documents.

C. Obtain necessary wage rate schedules from the U.S. Department of Labor and notify all Contracting Officers of changes when and as they occur.

D. Represent the District of Columbia Government in all relationships with Federal Agencies concerning procurement matters, including negotiations or agreements for cooperative procurement programs.

PART IV

Contract Review Committee.—A. There is hereby established a Contract Review Committee consisting of the following: (1) an Assistant Corporation Counsel and an alternate to be designated by the Corporation Counsel, who shall serve as Chairman; (2) a representative and an alternate representative of the Department of Finance and Revenue to be appointed by the Director; and (3) one Contracting Officer appointed or provided for herein to be designated by the Chairman. The Chairman of the Contract Review Committee shall select, on a rotating basis, one Contracting Officer or his designated Alternate Contracting Officer, other than the Contracting Officer negotiating the contract or change order under consideration to serve as the third member of the Committee. Whenever the Contract Review Committee is to consider a contract for construction or architect-engineer services, the third member shall be one of the Contracting Officers listed in Part I, A (1) through (3). The Committee shall develop its own procedure for the conduct of business.

B. The Contract Review Committee shall review and make recommendations to Contracting Officers on the following:

(1) Bids regardless of dollar amount where a Contracting Officer proposes to award a contract to a bidder other than the bidder submitting the lowest bid.

(2) Bids regardless of dollar amount where a Contracting Officer proposes to award a contract of a nature which involves a payment to the District where it is proposed to accept other than the highest bid.

(3) Negotiated contracts (except those designated in Part II, A(1)(b), A(4) and A(5) in excess of $25,000 where such contracts cover personal services, consultant services, architect-engineer services, and any other forms of contract involving negotiations as to price between the Contracting Officer and the Contractor. The Committee shall develop and issue standards and procedures for negotiated contracts and shall review such contracts to assure compliance with established negotiated procedures.

(4) Proposed contract change orders in excess of $100,000.

(5) Plea of error made by bidder.

(6) Requests of bidders who wish to withdraw bids.

(7) All protests received from bidders or prospective bidders.

C. In those instances where the Committee does not concur in the action recommended by a Contracting Officer and the Contracting Officer concerned does not agree with the recommendations of the Committee, the matter shall be presented by the Committee to the Assistant to the Commissioner (Deputy Mayor) or his designee for determination. This procedure shall not be construed to relieve the Contracting Officer of his responsibility for entering into and administering the contract involved.

PART V

Contract Advisory Committee.—A. There is hereby established a Contract Advisory Committee consisting of (1) the Director, Department of General Services, or his designee, who shall serve as Chairman; (2) the Director, Department of Highways and Traffic, or his designee, who shall serve as Alternate Chairman; and (3) such other members as the Chairman from time to time shall select from among the various District Government Contracting Officers designated or provided for in Part I hereof. Any three members of the said Committee shall constitute a quorum for the transaction of business. The Committee shall develop its own procedures for the conduct of business.

B. The purpose of the Contract Advisory Committee is to make available to the Commissioner, or his designee, and the Contracting Officers appointed by the Commissioner, assistance and advice on contracting matters, including the area of contracting authority herein delegated to each Contracting Officer. The Contract Advisory Committee is authorized to make any change in the basic language of the standard contract by a majority vote of such Committee, subject to the approval of the Corporation Counsel.

PART VI

Contract Appeals Board, D.C.—A. There is established a Contract Appeals Board, D.C., consisting of one or more Assistant Corporation Counsel designated by the Corporation Counsel, one of whom shall serve as Chairman of the Board, and two or more persons appointed or designated by the Commissioner from among officers assigned to the Corps of Engineers and detailed to assist the Commissioner pursuant to Sec. 503(b) of Reorganization Plan No. 3 of 1967, or from among active or retired District of Columbia officers and employees who have had practical experience in the administration of government contracts. Except as otherwise provided by its rules, all business of the Board shall be conducted by panels of not less than three members at least one of whom shall be an Assistant Corporation Counsel member, but any two members of a panel shall constitute a quorum for the transaction of any business of the Board.

No person shall serve as a member of a panel in the decision of any case in which the appeal has been taken from the action of a Contracting Officer or Alternate Contracting Officer of the department of which he is, or at the time of his retirement was, the Director or an employee, or in which he has participated directly in any aspect of the award or administration of the contract involved.

B. The functions of the Contract Appeals Board shall be to hear, to review, and to decide upon all protests and appeals from actions by Contracting Officers where the Contracting Officer is unable to satisfy the Contractor that the action taken was a proper action, and such other contractual appeals, or classes thereof, as the Commissioner may from time to time order. Upon request of the Contractor or of the Contracting Officer, and with the consent of the other, the subject matter of an appeal shall be remanded to the Contracting Officer, who shall thereupon reconsider his appealed decision, and upon such remand the appeal shall be dismissed. The decision of the Contract Appeals Board in every case shall be final subject to such limitations and review as may be provided by law.

C. The Contract Appeals Board is authorized to prescribe rules of practice and procedure, including the establishment of time limitations and the development of methods of perfecting appeals to it.

D. The Chairman of the Contract Appeals Board shall, from time to time, assign members to panels of the Board, shall be responsible for obtaining the necessary secretarial assistance for the Board and for maintaining centralized custody over all records of the Board, and may, from time to time, designate a member to serve as acting chairman during his own absence, disqualification or disability.

E. The activities of the Board shall be considered investigations or examinations of municipal matters within the meaning of the Act of July 1, 1902 (D.C. Code, 1967 ed., Sec. 1–237), and the members of said Board shall possess the powers vested in the Commissioners by said Act of July 1, 1902.

PART VII

Effective date.—The provisions of this Order shall become effective immediately.

ORGANIZATION ORDER NO. 10.—DEPARTMENT OF RECREATION

(Organization Ord. No. 10, Commissioner's Order No. 68–440 June 27, 1968; amended Aug. 6, 1968, Oct. 3, 1968, and Mar. 14, 1970.)

WHEREAS, by Section 2 or Reorganization Plan No. 3 of 1968, all of the functions of the Recreation Board, its Chairman and members, and all of the functions of the Superintendent of Recreation were transferred to the Commissioner of the District of Columbia, and the Recreation Board, together with the position of Superintendent of Recreation, was abolished; and

WHEREAS, Section 5 of said Reorganization Plan further provided that the Commissioner shall make such provisions as he may deem necessary with respect to winding up the outstanding affairs of the Recreation Board and the Superintendent of Recreation; and

WHEREAS, certain by-laws, rules and regulations had heretofore been adopted by the Recreation Board to govern its activities and it is necessary and desirable to assure continuity in and to provide for an orderly transition of the functions, operations and acts heretofore performed by the Recreation Board as previously constituted and by the Superintendent of Recreation.

NOW, THEREFORE, by virtue of the authority vested in me by Reorganization Plan No. 3 of 1968, it is hereby ORDERED THAT:

PART I

Department of Recreation.—There is hereby established under the direction and control of the Commissioner of the District of Columbia a Department of Recreation, headed by a Director of Recreation. The Commissioner shall have full authority over such Department and Director and over all personnel assigned to such Department.

There are hereby transferred to the Department of Recreation the functions, including the duties, powers and authorities of all officers assigned to, and all positions, personnel, property, records and unexpended balances of appropriations, allocations and other funds available to the Recreation Department as it existed immediately prior to the effective date of Reorganization Plan No. 3 of 1968.

PART II

Rules and regulations.—The by-laws, rules and regulations of the previously constituted District of Columbia Recreation Board, to the extent not inconsistent with

Reorganization Plan No. 3 of 1968 and this Order, shall remain in full force and effect, until modified or amended, and shall govern the activities of the Department of Recreation and its Director.

PART III

Prior activities ratified.—All official actions of the previously constituted Recreation Board and its Superintendent hertofore authorized, taken or adopted, are in all respects ratified and confirmed.

PART IV

Community Recreation Advisory Board.—There is hereby established a Community Recreation Advisory Board as follows:

Seven citizen members, one of whom shall be a member-at-large
Three members representing the youth of the community
One member representing Arts and Culture
Chairman of the Recreation Subcommittee of the D.C. City Council
President of the D.C. School Board or his designee
Regional Director, National Capital Park Service or his designee
President of the Board of Trade
Representative of the Neighborhood Planning Councils

The purpose of the Community Recreation Advisory Board is to increase citizen participation and involvement in the city's recreation program and to act in an advisory capacity to the Mayor-Commissioner and the Director of Recreation on matters affecting the leisure interests of the citizens of Washington, D.C.

It is the intent of the Mayor-Commissioner that the Community Recreation Advisory Board shall in general advise and assist the Mayor-Commissioner and the Director in the following respects:

(a) Advise the Mayor-Commissioner and the Department of Recreation on matters affecting the Department of Recreation;
(b) Advise the Mayor-Commissioner and the Director of Recreation on all matters referred to the Board, or on other matters independently studied or investigated by it on its own initiative;
(c) Keep the Mayor-Commissioner and the Director of Recreation informed of public sentiment on recreation matters by conducting studies and holding public hearings as needed;
(d) Assist the Mayor-Commissioner and the Director of Recreation in interpreting the Recreation Program and Policies to the general public;
(e) Advise the Mayor-Commissioner and the Director of Recreation on the need for new or improved services at all levels of the program;
(f) Make recommendations on the Recreation Department's Budget requests to the Mayor-Commissioner and the Director of Recreation;
(g) Aid in stimulating public interest, understanding, and participation of the community in solving public recreation problems.

Members shall serve without compensation and shall be appointed for a term of two years, except that for the initial appointment of the adult and youth citizen members, three shall be for two years and three shall be for one year as determined by the Mayor-Commissioner. Should a vacancy occur, a successor shall be appointed to complete such unexpired term.

Except for the Chairman, who shall be appointed by the Mayor-Commissioner, the membership of the Board shall determine its own organization, select its officers, establish committees, adopt rules of procedure. The Board shall meet at least once a month with a majority of the meetings scheduled in the community. Additional meetings may be held at the call of the Mayor-Commissioner, Director of Recreation, its Chairman, or a majority of its membership. The Board is authorized, at its discretion, to release to the press and the general public its reports and recommendations. All Board meetings are open to the press and the general public.

PART V

Effective date.—The provisions of this Order shall be effective at the time that the provisions of Reorganization Plan No. 3 of 1968 take effect.

ORGANIZATION ORDER NO. 11.—MAYOR'S ECONOMIC DEVELOPMENT COMMITTEE

(Organization Order No. 11, Commissioner's Order No. 68–524, Aug. 6, 1968, as amended by Commissioner's Order No. 70–52, Feb. 17, 1970.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is hereby ordered that:

Organization Order No. 11, dated August 6, 1968, be amended as follows:

There is established in the Government of the District of Columbia the Mayor's Economic Development Committee.

PART I

Policy.—The Government of the District of Columbia dedicates itself to the development of a realistic set of goals, objectives, and methods for improving the total economic and social well-being of the District by promoting economic growth; creating meaningful employment opportunities; promoting opportunities and financial assistance for business, including those sponsored by individuals and groups living in the neighborhoods; exploring ways and means of producing greater tax revenues; constantly improving buyer-seller relationships; maintaining good community relations; and, keeping the citizens informed with respect to all phases of the city's economic development program.

PART II

Purpose.—The primary purpose of the Committee shall be to serve as advisor to the Commissioner on overall economic development for the District of Columbia.

PART III

Functions.—The Committee shall:

1. Monitor and evaluate the execution of the Overall Economic Development Program by the District Government and by the private sector, and keep the Commissioner informed about its progress.
2. Advise in the preparation of the annual updating and revision of the Overall Economic Development Program and the Annual Development Action Program.
3. Submit annually to the Commissioner an "Economic Development Report for the District of Columbia" which will give the current status and a prognosis of economic development activities in the District of Columbia.
4. Solicit more active involvement of the community, its individuals and groups, in the economic planning process and assist the Commissioner in promoting the coordination of economic development efforts among individuals and groups, including groups appointed by the Commissioner, to the end that duplication and proliferation of effort will be avoided and harmony will prevail in the development and implementation of the Overall Economic Development Program.
5. Perform such other functions as the Commissioner may specifically assign to the Committee.

PART IV

Composition and membership:

1. The Committee shall consist of a Chairman and a Vice Chairman, who shall be named by the Commissioner, and such other persons as the Commissioner shall name.
2. The term of office of the Chairman and Vice Chairman shall be one year.
3. The terms of office of members of the Committee shall be one year.

PART V

Organization.—The Committee shall determine its own organization, rules and procedures, and establish and fill such additional officer positions from its membership as it may deem appropriate.

PART VI

Compensation.—All members shall serve without compensation, but appropriate expenses will be reimbursed as indicated in Part VII of this Order.

PART VII

Administration:

1. The Committee or its duly designated agent shall have authority to hire a staff and incur other expenses to carry out functions authorized by Part III of this Order,

provided such are done in accordance with laws, policies and practices applicable to the District of Columbia Government. The Director of the Department of Economic Development shall be responsible for the housekeeping functions of the Committee.

2. Additional staff support and services may be provided to the Committee upon its request to the Commissioner.

3. Expenses incurred by the Committee as a whole or by individual members, when authorized by the Commissioner, will become an obligation against funds designated for that purpose.

PART VIII

Effective date.—The provisions of this Order shall become effective immediately [Feb. 17, 1970].

ORGANIZATION ORDER NO. 12.—POLICE AND FIREMEN'S RETIREMENT AND RELIEF BOARD

(Replacement for Reorg. Ord. No. 31)

(Organization Order No. 12, Commissioner's Order No. 68–531, Aug. 6, 1968)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is ordered that Reorganization Order No. 31 of April 30, 1953—Police and Firemen's Retirement and Relief Board—be redesignated as Organization Order No. 12, and amended to read as follows:

PART I

Police and Firemen's Retirement and Relief Board:

1. There is established in the Government of the District of Columbia, under the administrative supervision of the Personnel Officer, Executive Office of the Commissioner, a Police and Firemen's Retirement and Relief Board, to be composed of the following: the Personnel Officer, the Director of Public Health, the Corporation Counsel, the Chief of Police and the Fire Chief.

2. In all cases of relief and retirement of members of the U.S. Park Police force, a member of the U.S. Park Police force, designated by the Superintendent, National Capital Parks, may sit as a member of the Police and Firemen's Retirement and Relief Board.

3. In all cases of relief and retirement of members of the White House Police force, or of members of the U.S. Secret Service, who contribute to the Policemen and Firemen's Relief Fund of the District of Columbia; a member of the White House Police force, or a member of the U.S. Secret Service as appropriate, designated by the Chief, U.S. Secret Service, may sit as a member of the Police and Firemen's Retirement and Relief Board.

4. Each member of the said Board is authorized to designate an alternate representative, or representatives, from among officials and employees within his organization, to exercise, at the meeting of the Board, all the powers vested in the respective member, except that no more than one alternate for each member shall participate at a single Board meeting. Each such alternate shall be a senior assistant of the member concerned.

5. The Personnel Officer shall serve as Chairman of the said Board, and the Director of Public Health shall serve as Vice-Chairman; and in the absence of both, the authorized alternate to the Personnel Officer shall serve as Chairman; and in his absence, the alternate to the Director of Public Health shall serve as Chairman.

6. All authorities and powers exercised by members of the Police and Firemen's Retirement and Relief Board, including those individuals who are designated, from time to time, as alternate members, shall be in accordance with applicable laws, rules and regulations.

PART II

Purpose and scope.—The Police and Firemen's Retirement and Relief Board is established for the purpose of insuring that fair and equitable policies and practices are established and applied in connection with the retirement and the relief of members of the:

1. Police and Fire Departments of the District of Columbia;

2. U.S. Park Police force;

3. White House Police force; and the

4. U.S. Secret Service, who contribute to the Police and Firemen's Retirement and Relief Fund of the District of Columbia.

PART III

Functions.—The functions of the Police and Firemen's Retirement and Relief Board shall be to:

1. Consider all cases for the retirement and the relief of the members listed in Part II; consider all cases of retirees of said organization who are seeking an increase in the pension relief allowance which they are already receiving; consider all cases of retirees of said organization who are required to undergo periodic medical examinations in connection with determining whether the relief allowance in such cases should be continued, increased, decreased, or discontinued; and consider all applications for the relief of widows and children under 18 years of age of said members.

2. Approve, or disapprove, all such cases, and fix the amount of pension relief in each instance, as appropriate, except that proposed actions in connection with the relief or the retirement of the Chief of Police and the Fire Chief shall be submitted to the Commissioner for his approval, or disapproval; and provided that, at all times, any action taken by the Retirement and Relief Board shall be subject to review by the Board of Appeals and Review, including final authority to concur in, reject, modify, or reverse such action.

3. Develop overall policies to insure equitable treatment in the retirement and the relief of individuals coming within the purview of the Police and Firemen's Retirement and Relief Board; and serve in an advisory capacity to the Commissioner and heads of departments and offices in all matters pertaining to the retirement and the relief of such individuals.

4. Perfect and adopt rules of procedure for the conduct and guidance of the Police and Firemen's Retirement and Relief Board.

(See attachment for procedural rules that apply to all appeals from decisions of the Police and Firemen's Retirement and Relief Board.)

PART IV

Eligibility for retirement and survivor annuities:

1. The Police and Firemen's Retirement and Relief Board established herein is hereby designated as agent of the Commissioner, to make all findings of fact necessary in the determination of eligibility for retirement and survivor annuities pursuant to Public Law 85–157, 85th Congress, as approved August 21, 1957, and to take final action in such cases subject herein to provisions for review set forth here.

2. In making such findings of fact the Board shall consider the written opinion submitted to it by the Board of Police and Fire Surgeons concerning the physical or mental condition, or both, of the member for whom involuntary separation or retirement is sought, together with all records and testimony of the Board of Police and Fire Surgeons relating to such member, and such records and testimony of any other person bearing on the matter before the Police and Firemen's Retirement and Relief Board.

3. The authority set forth in subsection (i) of the Policemen and Firemen's Retirement and Disability Act (P.L. 85–157; sec. 4–529, D.C. Code, 1967 ed.) to express a judgment as to the disability of a member from performing further duty in his department is hereby delegated exclusively to the Police and Firemen's Retirement and Relief Board.

PART V

Subpoena powers.—The Police and Firemen's Retirement and Relief Board is authorized and empowered to summon any person before it to give testimony, under oath or affirmation, as to any matter affecting retirement or relief of any individual whose retirement or relief is being considered; and any member of the said Board shall have power to administer oaths or affirmations to witnesses appearing before it. Such summons shall be served by a member of the Metropolitan Police or Fire Departments.

PART VI

Secretarial assistance.—The Chairman of the Police and Firemen's Retirement and Relief Board shall be responsible for arranging for necessary secretarial assistance for the Board, and for seeing that reports and records are prepared and maintained in connection with

meetings held, findings and recommendations made, and actions taken.

PART VII

Repeal of previous orders.—All Commissioners' Orders, or parts of Commissioners' Orders in conflict with the provisions of this Order are, to the extent of such conflict, hereby repealed. Also repealed is Commissioners' Order No. 60–2394 of November 22, 1960, concerning Appeals.

PART VIII

Effective date.—This order shall become effective upon receipt.

ORGANIZATION ORDER NO. 13.—HACKERS' BOARD

(Organization Order No. 13, Commissioner's Order No. 68–559, Aug. 15, 1968, as further amended Dec. 24, 1969)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is ordered that Organization Order No. 107, dated May 17, 1955, as amended, is hereby redesignated as Organization Order No. 13, and is hereby amended to read as follows:

PART I

The Board of Revocation and Review of Hackers' Identification Cards, established by Reorganization Order No. 54, dated June 30, 1953, as amended, shall be responsible to the Commissioner but shall hereafter be known as the Hackers' License Appeal Board, with the short title of Hackers' Board.

PART II

1. *Membership.*—The Hackers' Board shall consist of five (5) members, namely:

a. A senior employee of the Office of the Secretariat designated by the Executive Secretary, and such member shall be Chairman of the Board. This appointment shall normally be for one year, unless sooner terminated by the appointing authority.

b. A member or an advisor of the Citizens' Traffic Board (hereinafter, Traffic Board), assigned as provided in paragraph 3 a and b of this part and compensated as provided in paragraph 4 of this part.

c. Two attorneys designated as provided in paragraph 3c and 3d of this part and compensated as provided in paragraph 4 of this part.

d. A member holding a valid identification face as a public driver, under the jurisdiction of the Hackers' Board, assigned as provided in paragraph 3e and 3f of this part and compensated as provided in paragraph 4 of this part.

e. A member holding a valid identification face as a public vehicles for hire driver, under the jurisdiction of the Hackers' Board, as described in Paragraphs 3., e., and 3., g., of this part and compensated as provided in Paragraph 4 of this part shall serve as an alternate member who shall sit in the absence of the Chairman. Such an individual shall be designated as the Vice Chairman. This appointment shall normally be for one year, unless sooner terminated by the appropriate authority.

2. *Quorum.*—Three members shall constitute a quorum, one of whom shall be one of the two attorney members.

3. *Designation, appointment, and assignment:*

a. The Executive Secretary of the Traffic Board shall keep the Chairman of the Hackers' Board currently advised of the names of the members of the Traffic Board who are willing to serve as members of the Hackers' Board, and the Chairman shall maintain a list of such members.

b. The Chairman of the Hackers' Board shall assign, in rotation, Traffic Board members on said list to sit in specified cases or at specified times.

c. The President of the Bar Association of the District of Columbia and the President of the Washington Bar Association of the District of Columbia shall each submit to the Commissioner the names of not less than sixteen (16) members of such Associations who are willing to serve as members of the Hackers' Board and whom the respective Presidents nominate for appointment to said Board. The Commissioner shall, annually, make a selection of sixteen (16) attorneys to serve as members of the said Hackers' Board, each of whom shall serve until his successor is appointed and each of whom shall be subject to removal by the Commissioner. After the said appointees have taken the oath of office, the Executive Secretary to the Commissioner shall furnish to the Chairman of the Hackers' Board the names of the attorney members selected by the Commissioner.

d. The Chairman of the Hackers' Board shall assign in rotation, attorneys on said list to sit in specified cases or at specified times.

e. The Commissioner shall annually select a panel of eight (8) public vehicle drivers from a list of nominations provided by taxi associations, fleets, and independents or from among any other public vehicle drivers considered qualified by the Commissioner. Those nominated by taxi associations, fleets, or independents shall consist of persons who are willing to serve as members of the Hackers' Board. Those selected by the Commissioner for appointment to said Board shall serve until their successors are appointed but shall be subject to removal by the Commissioner. Not more than one nomination shall be made by any taxi association or fleet. Representation among the eight (8) members on said panel shall be distributed as follows: four (4) from taxi associations, three (3) from fleets, and one (1) from the independents or other public vehicle drivers. After said appointees have taken the oath of office, the Executive Secretary to the Commissioner shall furnish to the Chairman of the Hackers' Board a list of the hackers selected by the Commissioner.

f. The Chairman of the Hackers' Board shall assign in rotation, hacker appointees to sit in specified cases or at specified times.

g. The Executive Secretary shall annually select one public vehicle for hire driver from a list of nominations submitted annually for the panel described in Paragraph 3., e., above, to be the Vice Chairman who shall sit only in the absence of the Chairman. This member will conform to the qualifications and standards stated in Paragraph 3., e., above, but may be selected from the total nomination list without regard to affiliation or classification.

4. *Oath and compensation.*—The members of the Traffic Board, the attorney members, and the member selected from the class of public vehicle drivers to serve on the Hackers' Board shall be intermittent employees of the District of Columbia; shall take the oath of office prescribed for civil employees of the District of Columbia; and shall receive compensation when actually performing services as members of the Hackers' Board.

5. *Assistant Corporation Counsel to serve as legal advisor.*—The Corporation Counsel shall designate an Assistant Corporation Counsel to serve as the legal advisor to the Hackers' Board.

6. *Conflict of interest.*—A member of the Hackers' Board shall temporarily disqualify himself from sitting on a matter pending before the Hackers' Board when that member is associated with the appellant or respondent in any way, either directly or through a partnership, association, company or similar organization or as an attorney, representative, officer, or advisor.

PART III

1. *Functions and responsibilities.*—Functions and responsibilities of the Hackers' Board shall be as follows:

a. To consider appeals from adverse decisions on applications for licenses submitted in accordance with the requirements of D.C. Code, Section 47–2331 (e) and (j) (1967 ed.), and to affirm such decisions, or approve such applications.

b. To determine whether a complaint against an individual licensed in accordance with the requirements of D.C. Code, Section 47–2331 (e) and (j) (1967 ed.), justified the suspension or revocation of such license under the authority contained in D.C. Code, Section 47–2345 (a) (1967 ed.), and if such action be justified to suspend or revoke such license.

c. To recommend to the Commissioner changes in criteria or standards to be applied in the denial of applications submitted in accordance with the requirements of D.C. Code, Section 47–2331 (e) and (j) (1967 ed.), and in the suspension or revocation of such licenses under the authority of D.C. Code, Section 47–2345 (a) (1967 ed.).

2. The activities of the Board shall be considered investigations or examination of municipal matters within the meaning of D.C. Code, Section 1–237 (1967 ed.), and the Board shall possess the powers vested in the Commission by said section.

3. The procedures of the Board shall be in accordance with such rules as may be prescribed by the Corporation Counsel, and the Corporation Counsel is hereby authorized to prescribe, and from time to time amend, rules governing the procedures of the Board, including the establishment of time limitations where not otherwise set forth, and the development of methods of perfecting appeals to the Board.

4. The decisions of the Board pursuant to paragraph 1 of this part shall be final, except in any case in which the Board shall prescribe a waiting period of five (5) years or longer before an appellant may again apply for a license, the appellant may appeal to the Commissioner in accordance with the rules of practice and procedure prescribed for the Board.

PART IV

The Office of the Secretariat shall provide the necessary administrative services for the Hackers' Board.

PART V

This Order shall become effective thirty (30) days from the date hereof.

ORGANIZATION ORDER NO. 14.—HEALTH PLANNING ADVISORY COMMITTEE

(Replacement for Organization Order No. 142, 64–194; Organization Order No. 14, Commissioner's Order No. 68–612, Sept. 19, 1968, as amended Mar. 7, 1969, June 19, 1970.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is ordered that Organization Order No. 14, Health Planning Advisory Committee, dated September 19, 1968, is hereby amended in its entirety to read as follows:

PART I

Purpose.—The District of Columbia Health Planning Advisory Committee is established to act in an advisory capacity to the Commissioner of the District of Columbia, and to enable advisory participation concerning comprehensive health planning, the construction and regulation of hospitals, medical and related facilities, public health programs and other matters affecting the health of residents of the District of Columbia.

PART II

Functions.—The District of Columbia Health Planning Advisory Committee shall serve to alert the Commissioner to changing and emerging health problems and developments throughout the District of Columbia, and shall facilitate communication and cooperation among agencies, organizations, the professions, and the public in developing recommendations for solutions to these problems. The Committee shall consult with and advise the Commissioner concerning:

1. Comprehensive planning as it will be carried out under the District Planning Program in conformity with the requirements of Title 42, U.S. Code (1964 ed., Supplement II), Section 246.

2. The community's requirements for hospitals and other types of health and medical facilities, construction and modernization programs for the District, and proposals for construction, operation and utilization of hospitals and other medical facilities, public or private, within the District (except Federal facilities) financed in whole or in part from public funds through reimbursement or other processes, including the location, type and size of facilities and the services to be provided.

3. The public health and medical care needs and requirements and programs designed to meet such needs and requirements.

4. The coordination of the health related programs and activities of the Department of Human Resources with those of other District departments and agencies, voluntary agencies, community groups and associations, and professional organizations.

5. The stimulation of interest, understanding and participation by the community in the development of measures for the solution of health problems; proposals for new, or revision of existing policies, regulations, or statutes that affect the public health or the responsibilities of the Department.

6. The general review of the health related budget, programs, operations, and activities of the Department of Human Resources in light of the District's plan for Comprehensive Public Health Services, recommendations adopted under its Comprehensive Health Planning Program and suggestions for modification indicated by such review.

PART III

Composition and membership.—The Committee shall consist of members appointed by the Commissioner from among three groups: representatives of District of Columbia agencies, representatives of non-governmental organizations and groups concerned with health, and representatives of consumers of health services. Consumers of health services shall comprise a majority of the Committee membership. Committee members shall serve for three (3) years, with the terms of no more than one-third of the membership expiring in any given year.

PART IV

Compensation.—Members shall serve without compensation, but appropriatae expenses will be reimbursed as indicated in Part IV of this Order.

PART V

Organization.—The District of Columbia Health Planning Advisory Committee shall determine its own organization, establishing appropriate sub-committees, and shall perfect its own rules of procedure; provided that one or more of its sub-committees shall be constituted to meet the requirements of the Hospital Survey and Construction Act (Title 42, U.S. Code (1964 ed.), Section 291d(a)(3)); the Mental Retardation Construction Act (Title 42, U.S. Code (1964 ed.), Section 2674(a)(3)); and the Community Mental Health Centers and other Mental Health Facilities Act (Title 42, U.S. Code (1964 ed.), Section 2684(a)(3)).

The Committee shall elect its own officers annually from among its own members. It shall convene at least nine (9) times a year at scheduled meetings. It shall hold additional meetings at the call of the Commissioner, its Chairman, or a majority of the Committee membership. The Commissioner shall be notified of all such meetings in advance and shall have the option of attending or sending a representative to attend such meetings.

PART VI

Administration.—The Director of the Department of Human Resources shall assist the Committee in matters of administration and shall provide it with necessary staff services. Expenses incurred by the Committee as a whole or by individual members thereof, when authorized by the Director of the Department of Human Resources, will become an obligation against funds designated for this purpose.

PART VII

Reports.—Reports and recommendations of the Committee shall be furnished to the Commissioner and may be released at such times and under such circumstances as the Commissioner may determine.

PART VIII

Effective date.—The provisions of this Order shall become effective immediately.

ORGANIZATION ORDER NO. 15.—DISTRICT OF COLUMBIA COMMISSION ON ACADEMIC FACILITIES

(Replacement for Organization Order No. 143; Organization Order No. 15, Commissioner's Order No. 68–617, Sept. 20, 1968, as amended Mar. 7, 1969)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is ordered that Organization Order No. 143 of March 6, 1964, as amended, be hereby designated as Organization Order No. 15, that its title be changed to "District of Columbia Commission on Academic Facilities", and that it be amended to read as follows: ORDERED:

There is hereby established a District of Columbia Commission on Academic Facilities to be composed of private

citizens, educators and representatives of higher learning, including junior colleges and technical institutes.

PART I

A. *Purpose.*—The Commission shall make recommendations to the Commissioner concerning matters of higher education in the District of Columbia and particularly concerning the formulation and administration of a plan for the financing or construction, rehabilitation, and other improvements of academic and related facilities in institutions of higher learning, including junior colleges and technical institutes, and the District of Columbia.

PART II

A. *Functions.*—The Commission on Academic Facilities shall:

1. Recommend to the Commissioner the formulation of a plan for higher education in the District of Columbia, which plan shall meet the requirements of section 105(a) of the Higher Education Facilities Act of 1963 (Public Law 88–204; 77 Stat. 363), as amended.

2. Recommend to the Commissioner projects that may be eligible for Federal aid under said Act.

3. Consider applications submitted for Federal grants and loans pursuant to said Act and forward the recommended applications for approval to the Commissioner and to the Office of Education.

4. Recommend policy to the Commissioner on all matters relating to the administration of the Title I of the Higher Education Facilities Act of 1963, as amended, and Title VI, Part A, of Higher Education Act of 1965, as amended, State Plans for higher education in the District of Columbia.

5. Receive and develop pertinent data relating to the above-referenced Acts of Congress; disseminate information; and formulate suggested criteria, standards, methods, priorities and other actions required under the said Acts.

PART III

A. *Composition.*—The Commission shall consist of twenty-six (26) members appointed by the Commissioner on the basis of broad representation of the public and of institutions of higher education, including junior colleges and technical institutes in the District of Columbia. The members of the Commission shall include, but not be limited to, two (2) groups, the first consisting of the Presidents, or their delegates, of each institution of higher education in the District of Columbia eligible for Federal funds under Title I of the Higher Education Facilities Act of 1963, as amended, and under Title VI, Part A, of the Higher Education Act of 1965, as amended, including the Federal City College and Washington Technical Institute, and the Executive Director of the Consortium of Universities or his representative shall be a member of this group. The membership shall also include a second group consisting of interested citizens recommended for appointment to the Commissioner, by the Commission or any member of the public at large, and shall include the Commissioner or his delegate. Each member of the Commission, including the Commissioner, shall have one (1) vote.

PART IV

A. *Term of office.*—The term of office of the representatives of the institutions of higher education shall continue as long as the institutions are eligible for Federal funds under the aforesaid Act. Should a vacancy occur through the death, incapacity or resignation of an institutional member the institution may designate a new member who may serve on the said Commission with full powers under the official appointment of his predecessor. An institution of higher education shall be entitled to representation on the Commission as long as the institution is eligible for Federal funds under either Title I of the Higher Education Facilities Act of 1963, as amended, or Title VI, Part A of the Higher Education Act of 1965, as amended. The term of office of the non-institutional members of the Commission shall be for three (3) years, except that of the persons first appointed as members, one-third shall serve for one (1) year, such term to expire July 31, 1969; and one-third for two (2) years, such term to expire July 31, 1970; and one-third for three (3) years, such term to expire July 31, 1971. Should a vacancy occur through the death, incapacity or resignation of a member, a successor shall be appointed to complete the unexpired term. No non-institutional person who has served six (6) years consecutively as a member shall be eligible for reappointment until the expiration of one (1) year following the termination of his appointment.

PART V

A. *Oath of office.*—Members of the Commission shall take the following oath of office:

"I, _____ having been duly appointed by the Commissioner as a member of the Commission on Academic Facilities in the District of Columbia, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Commission to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

PART VI

A. *Compensation.*—Members of the Commission shall serve without compensation.

PART VII

A. *Organization.*—Upon recommendation of the Commission, the Commissioner shall appoint an Executive Secretary, a Chairman and a Vice Chairman. The Executive Secretary to the Commission shall have no vote. The Commission shall determine its own organization and may name such officers other than those appointed by the Commissioner as it deems necessary. The Commission shall meet at the call of the Commissioner, or any officer of the Commission, or at the request of five (5) members of the Commission.

PART VIII

Administration.—The Director of Program Development, District Government, shall provide necessary administrative supervision of the staff to the Commission and such other staff support as may be necessary. The Executive Secretary of the Commission shall be responsible for the preparation of applications for funding approved by the Commission and for submission of same to the District Commissioner's Office and to the Office of Education, Department of Health, Education and Welfare.

PART IX

The Commission shall regularly report its activities to the Commissioner.

ORGANIZATION ORDER NO. 16.—COMMISSION ON THE ARTS

(Organization Order No. 16, Commissioner's Order No. 68–737, Nov. 29, 1968.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is ORDERED THAT:

There is hereby established in the Government of the District of Columbia, a Commission on the Arts.

PART I

Purpose.—The purpose of the Commission on the Arts is to advise and recommend to the Commissioner of the District of Columbia concerning matters related to the arts, and to encourage the development of programs which promote progress of the arts. For purposes of this Order, the term "arts" (both visual and performing) includes, but is not limited to, music (instrumental and vocal), dance, drama, folk art, creative writing, architecture and allied fields, painting, sculpture, photography, graphic and craft arts, industrial design, costume and fashion design, motion pictures, television, radio, tape and sound recording, and the arts related to the presentation, performance, execution and exhibition of such major art forms.

PART II

Functions.—The Commission on the Arts shall:

1. Advise and recommend to the Commissioner concerning needs of the people of the District of Columbia

for artistic and cultural activities, and concerning the development and improvement of arts and cultural programs in the District.

2. Prepare and recommend to the Commissioner an annual plan for artistic projects and productions in the District of Columbia, which plan shall meet the requirements of Section 5(h) of the National Foundation on the Arts and Humanities Act of 1965 (P.L. 89–209), as amended.

3. Consider, and recommend to the Commissioner, applications for Federal grants-in-aid to projects or productions in the arts.

4. Work with governmental departments and agencies, private organizations and the people of the community, to develop and undertake programs which will encourage maximum participation in artistic and cultural activities and which will promote greater appreciation and enjoyment of the arts.

5. Accept gifts, contributions, and bequests of money or property to be used for carrying out the purposes of this Order.

PART III

Membership and term of office.—The Commission on the Arts shall be appointed by the Commissioner and shall consist of at least thirty-four (34) members who shall be representative of the arts and of community interests in the arts. The term of office of members of the Commission shall be three years, except that initial appointments shall be made as follows: of the members first appointed, at least eleven (11) shall be appointed for one year, eleven (11) for two years, and twelve (12) for three years. Upon the expiration of his term, each member shall continue to serve until his successor is appointed. Should a vacancy occur through the death, incapacity, resignation, or removal of a member, a successor shall be appointed to complete the unexpired term of that member.

PART IV

Oath of office.—Members of the Commission shall take the following oath of office:

"I, ----------, having been duly appointed by the Commissioner as a member of the Commission on the Arts in the District of Columbia, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Commission to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties; so help me God."

PART V

Compensation.—Members of the Commission shall serve without compensation.

PART VI

Organization.—The Commission shall designate a Chairman and such other officers as it deems necessary, shall determine its internal organization, and shall establish its own rules and procedures. Upon recommendation of the Commission, the Commissioner shall appoint an Executive Director to the Commission. The Executive Director shall have no vote. The Commission shall meet at the call of the Commissioner, or of the Chairman of the Commission, or upon request of five (5) members of the Commission.

PART VII

Administration.—The Executive Director of the Commission shall be responsible for the administration of the Commission. Expenses incurred by the Commission as a whole, or by individual members, or by the staff of the Commission, shall be met from public and/or private funds provided for the administration of District affairs.

PART VIII

Reports.—The Commission shall regularly report its activities to the Commissioner.

ORGANIZATION ORDER NO. 17.—PUBLIC WELFARE ADVISORY COMMITTEE

(Organization Order No. 17, Commissioner's Order No. 69–84, Feb. 28, 1969, as amended May 26, 1969.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is ordered that Reorganization Order No. 61 dated July 28, 1953, as amended, establishing and making provisions for the Public Welfare Advisory Council, be hereby redesignated as Organization Order No. 17 and read as follows:

PART I

Public Welfare Advisory Committee.—There is hereby established in the Government of the District of Columbia a permanent committee of citizens representative of the community at large, to be known as the Public Welfare Advisory Committee.

PART II

Purpose.—The Public Welfare Advisory Committee is established to foster the interest, involvement and maximum feasible participation of the citizens of the District of Columbia in public welfare matters, and to advise and assist the Government of the District of Columbia and its Department of Public Welfare concerning existing and proposed public welfare programs and problems.

PART III

Function.—The Public Welfare Advisory Committee shall advise and assist the Director of Public Welfare and the Commissioner in the following respects:

1. Study, evaluate and make appropriate recommendations with respect to (a) the operations, and activities of the Department of Public Welfare, (b) proposals for new policies and statutes, or changes in existing policies and statutes, affecting the public welfare program, and (c) make such recommendations by testimony or otherwise, as it deems necessary or appropriate.

2. Act as an intermediary and source of information in bringing to the Department of Public Welfare the views and concerns of the District of Columbia community with regard to public welfare programs and problems, and interpret such Department's activities to the community.

3. Determine and make known the public welfare needs and desires, and where appropriate, formulate proposals or programs to meet such needs and desires.

4. Assist in coordinating the programs and activities of the Department of Public Welfare with the programs and activities of community organizations.

5. Evaluate, upon request by the Commissioner, the qualifications of candidates for the position of Director of Public Welfare and make appropriate recommendations.

PART IV

Composition.—The Committee shall consist of fifteen members (residents of the District of Columbia for a period of at least 3 years immediately prior to appointment), appointed by the Commissioner of the District of Columbia, plus one member, a user or former user of Department services, from each of the Department of Public Welfare's decentralized Neighborhood Centers, such members to be elected by the Neighborhood Committees, set up under the auspices of the Public Welfare Advisory Committee.

The appointed members of the Committee will represent all geographic areas of the District of Columbia, all economic levels, and all cultural backgrounds. They will have one point in common: their concern for public welfare policies and problems.

PART V

Term of office.—The terms of the appointed members are to be fixed at three years, except for initial appointments, as follows: Of the 15 persons first appointed as members of said Committee, five shall be appointed for one year, five for two years, and five for three years. Should a vacancy occur through death, incapacity, removal, or resignation of a member, a successor shall be appointed to complete the unexpired term of that member. After expiration of his term, each member shall continue to serve until his successor is appointed and qualified. Members will serve for not longer than two full consecutive

terms. The members elected by the Neighborhood Centers of the Department of Public Welfare will serve for a term of one year, beginning September 1, and may be reelected for a maximum of three one-year terms. The method of their selection shall be determined by the Neighborhood Center Committee with the approval of the Chairman of the Public Welfare Advisory Committee.

Compensation.—All members shall serve without compensation, but appropriate expenses will be reimbursed as indicated in Part VII of this Order.

PART VI

Organization.—The Public Welfare Advisory Committee shall determine its own organization and perfect its own rules of procedure. The Committee shall elect its officers annually from among its own members. It shall convene at least nine times each year at regularly scheduled meetings. It shall hold additional meetings at the call of the Commissioner, the Director of Public Welfare, the presiding officer of the Committee, or a majority of the Committee membership. A quorum shall consist of a majority of the members of the Committee present and voting. All decisions of the Committee shall be by majority vote of such quorum. The Committee shall enact its own by-laws, and determine its own procedures consistent with this Order, to implement the performance of its functions.

PART VII

Administration.—The Director of Public Welfare shall assist the Committee in matters of administration and shall provide it with the necessary staff services. Expenses incurred by the Committee as a whole, or by individual members, when authorized by the Director of Public Welfare (or designee) will become an obligation against funds designated for this purpose.

PART VIII

Reports.—Reports and recommendations of the Committee shall be furnished the Commissioner and the Director of Public Welfare, and may be released at such times and under such circumstances as the Commissioner, the Director of Public Welfare, or Committee may determine.

PART IX

Effective date.—The provisions of this order shall become effective immediately.

ORGANIZATION ORDER NO. 18.—CRIMINAL JUSTICE COORDINATING BOARD

(Organization Order No. 18, Commissioner's Order No. 69–135, Mar. 24, 1969, as amended May 14, 1970, Sept. 8, 1970, Sept. 14, 1970, and Dec. 14, 1970.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is ORDERED THAT:

There is hereby established in the Government of the District of Columbia the Criminal Justice Coordinating Board.

PART I

Functions.—The Criminal Justice Coordinating Board shall review law enforcement needs and problems, advise the Commissioner on long-range and immediate law enforcement objectives, goals, and programs, including those under the Omnibus Crime Control and Safe Streets Act of 1968 and the Juvenile Delinquency Prevention and Control Act of 1968; recommend to him general priorities for the improvement of the criminal justice system in the District of Columbia; and assist in the coordination of programs to achieve the objectives and goals thereof.

PART II

Composition and membership.—The Board shall be composed of the following members:

A. *Ex officio members:*

1. Commissioner of the District of Columbia.
2. Chairman, D.C. Council.
3. Assistant to the Commissioner.
4. Corporation Counsel.
5. Associate Deputy Attorney for the Administration of Criminal Justice.
6. U.S. Attorney for the District of Columbia.
7. Chief Judge, U.S. Court of Appeals.
8. Chief Judge, U.S. District Court.
9. Chief Judge, D.C. Court of Appeals.
10. Chief Judge, D.C. Court of General Sessions.
11. Chairman, Judicial Council's Committee on Administration of Justice.
12. Director, Department of Human Resources.
13. Director, Office of Youth Opportunity Services.
14. Chief, Metropolitan Police Department.
15. Director, Department of Corrections.
16. Chairman, Board of Parole.
17. Executive Director, Washington Metropolitan Council of Governments.
18. Director, Public Defender Service.
19. Chairman of the Model Cities Commission.

B. *Other members:*

Five (5) nongovernment members, to be selected by the Commissioner, whose terms shall coincide with his; and five (5) nongovernmental members of the Youth Services Advisory Committee, to be selected by the Commissioner, and whose terms shall coincide with his.

PART III

Organization.—The Commissioner shall serve as Chairman, the Assistant to the Commissioner as Chairman pro tem, and the Corporation Counsel as Vice Chairman of the Criminal Justice Coordinating Board.

PART IV

Compensation.—Ex officio members of the Board shall serve without additional compensation; however, appropriate expenses may be reimbursed as indicated in Part V of this Order.

PART V

Administration.—The Director of the Office of Criminal Justice Plans and Analysis shall assist the Board in matters of administration, and shall provide the Board with the necessary staff services. He shall be assisted in matters pertaining to juvenile delinquency by the Director of the Office of Youth Opportunity Services. Expenses incurred by the Board as a whole, or by individual members, when authorized by the Director of the Office of Criminal Justice Plans and Analysis, will become an obligation against funds designated for that purpose.

PART VI

Effective date.—The provisions of this Order shall become effective immediately.

ORGANIZATION ORDER NO. 19.—MAYOR'S COMMITTEE ON CRIME AND DELINQUENCY

(Mar. 24, 1969)

Commissioner's Order No. 70–463, dated Dec. 14, 1970, revoked this Order and abolished the Mayor's Committee on Crime and Delinquency established thereunder.

ORGANIZATION ORDER NO. 20.—ADVISORY COMMITTEE ON THE AGING

(Organization Ord. No. 20, Commissioner's Order No. 69–212, May 12, 1969.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is ORDERED THAT:

Organization Order No. 144 of April 28, 1964, as amended, establishing the Interdepartmental Committee on Aging, is hereby redesignated as Organization Order No. 20, and reads as follows:

There is hereby established in the Government of the District of Columbia an Advisory Committee on Aging.

PART I

Purpose.—The purpose of the Committee shall be to serve in an advisory capacity to the Director of Public Welfare in the administration of the District of Columbia's plan to carry out the objectives of the Older Americans Act of 1965 (Public Law 89–73) and Federal regulations issued pursuant thereto.

PART II

Functions.—The Committee shall:

1. Advise and make recommendations to the Director of Public Welfare on current and potential programs and activities, both governmental and nongovernmental, relating to special problems of welfare of older persons.
2. Advise on methods to stimulate, inform and educate local organizations on programs and activities to inform the community and older people themselves about aging and what can be done to improve conditions for the aging.

3. Serve as a clearinghouse through which various public and nonpublic organizations may exchange information, coordinate programs, and engage in joint endeavors.

4. Provide advice and information to D.C. departments and agencies and non-governmental organizations that may be considering inauguration of services, programs, or facilities for the aging.

5. Advise and make recommendations on programs to encourage employers to hire older persons and for using older persons to do uncompensated volunteer work.

PART III

Composition and membership.—The Committee shall consist of 17 members to be appointed by the Commissioner. At least 9 of the members shall be representatives of older people themselves, and of those public and voluntary organizations concerned with the elderly and those that have given evidence of particular dedication to, and understanding of, the aged. Ex officio members of the Committee shall be the Director of Public Welfare; the Director of Public Health; the Director of Vocational Rehabilitation; the Superintendent of Schools; the Director of Recreation; the Executive Director, National Capital Housing Authority; the Direotor, U.S. Employment Service for the District of Columbia; and the Director D.C. Public Library. Each director may designate an alternate member to serve his temporary absence and may utilize the services of his Department in furthering the objectives of the Committee.

PART IV

Term of office.—Committee members shall serve terms of three years, except for initial appointments which shall be as follows: one-third for three years, one-third for two years and one-third for one year. If a vacancy occurs through death, incapacity, removal or resignation of a member, a successor shall be appointed to complete the unexpired term of that member. After expiration of his term, each member shall continue to serve until his successor is qualified and appointed.

PART V

Compensation.—All members shall serve without compensation, but appropriate expenses will be reimbursed as indicated in Part VII of this Order.

PART VI

Organization.—The Committee shall determine its own organization and perfect its own rules of procedure. The Committee shall elect a Chairman and a Vice Chairman who shall serve for one year, or until such time as a successor has been duly elected. The Committee may designate such other officers as it deems necessary.

PART VII

Administration.—The Director of Public Welfare shall assist the Committee in matters of administration and shall provide it with necessary staff services. Expenses incurred by the Committee as a whole, or by individual members therof, when authorized by the Director of Public Welfare, will become an obligation against funds designated for this purpose.

PART VIII

Reports.—The Committee shall submit periodic progress reports to the Director of Public Welfare and the Commissioner.

PART IX

Effective date.—The provisions of this Order shall take effect immediately.

ORGANIZATION ORDER NO. 21.—TRAFFIC COORDINATING COMMITTEE

(Organization Order No. 21, Commissioner's Order No. 69–235, May 26, 1969.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is HEREBY ORDERED THAT:

Commissioner's Order No. 58–1208 of August 1, 1958, as amended, be redesignated as Organization Order No. 21 and read as follows:

There is hereby established in the Government of the District of Columbia a Traffic Coordinating Committee to be composed of District department and agency representatives, other officials, and citizens concerned with various aspects of highway safety, including traffic control and safety, in the District of Columbia.

PART I

Functions.—The Committee shall:

1. Advise, assist and make recommendations to the Commissioner, the Director of the Department of Motor Vehicles and other heads of departments and agencies, as appropriate, in matters relating to highway safety such as programs designed to reduce traffic accidents and deaths, injuries, property damage, and others.

2. Advise and make recommendations on collecting, analyzing and disseminating information related to highway safety and traffic safety.

3. Encourage and assist in the implementation of innovative highway safety and traffic safety programs.

4. Analyze problems of traffic control and traffic safety and make recommendations on the needs for improving the flow of traffic and the control of vehicles, drivers and pedestrians.

5. Arrange for publicizing the District's Highway Safety Program and Traffic Safety Program, and for assisting in the implementation of the provisions thereof.

PART II

Composition and membership.—The Committee shall consist of the following:

1. Highway Safety Program Coordinator, who shall be the Chairman;
2. Director of the Department of Motor Vehicles;
3. Chairman, Citizens Traffic Board;
4. Executive Secretary, Citizens Traffic Board; and representatives from the following:
5. Office of the Corporation Counsel;
6. D.C. Court of General Sessions;
7. Department of Highways and Traffic;
8. Department of Public Health;
9. Metropolitan Police Department;
10. Fire Department;
11. Motor Vehicle Parking Agency;
12. D.C. Public Schools;
13. Public Service Commission;
14. U.S. Park Police;
15. National Capital Region, National Park Service.

PART III

Term of office.—The members of the Committee shall serve until notified otherwise by the Commissioner of the District of Columbia.

PART IV

Compensation.—Ex officio members of the Committee shall serve without additional compensation; however, appropriate expenses may be reimbursed as indicated in Part VI of this Order.

PART V

Organization.—The Committee shall determine its own organization and perfect its own rules of procedures.

PART VI

Administration.—The Director of Motor Vehicles shall assist the Committee in matters of administration and shall provide it with necessary staff services. Expenses incurred by the Committee as a whole, or by individual members, when authorized by the Director of Motor Vehicles will become an obligation against funds designated for that purpose.

PART VII

Effective date.—The provisions of this Order shall become effective immediately.

ORGANIZATION ORDER NO. 22.—MENTAL RETARDATION COORDINATING COMMITTEE

(Organization Order No. 22, Commissoner's Order No. 69–276, June 6, 1969.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is HEREBY ORDERED:

There is hereby established in the Government of the District of Columbia a Mental Retardation Coordinating Committee.

PART I

Purpose.—The Mental Retardation Coordinating Committee for the District of Columbia is established to represent the following departments and agencies:

1. Department of Public Health.
2. Department of Public Welfare.
3. District of Columbia Public Schools.
4. Department of Recreation.
5. Department of Vocational Rehabilitation.
6. Department of Corrections.
7. D.C. Health and Welfare Council.
8. D.C. Manpower Administration.

The Committee shall provide counsel and assistance for the coordination of the activities of the above-named departments and agencies in carrying out the official Plan for Comprehensive Services to the Mentally Retarded in the District of Columbia.

PART II

Functions.—The Mental Retardation Coordinating Committee shall serve to alert the Directors of the various Departments, the Heads of the Agencies, and the public to the complexities of the problems and objectives necessary in carrying out the Plan for Comprehensive Services to the Mentally Retarded and shall recommend changes in plans and programs to the various Departments and Agencies, wherever appropriate.

PART III

Composition and membership.—The Committee shall consist of eight members, one representing each of the Departments and Agencies enumerated in Part I hereof. Each member shall be appointed by the Commissioner and shall serve until notified otherwise by the Commissioner. The Committee shall select its own Chairman.

PART IV

Compensation.—Each member is to serve without additional compensation.

PART V

Administration.—The Department of Public Health shall provide necessary support services to the Committee.

PART VI

Effective date.—The provisions of this Order are to become effective immediately.

ORGANIZATION ORDER NO. 23.—D.C. PUBLIC SPACE COMMITTEE

(Organization Order No. 23, Commissioner's Order No. 69–502, Sept. 3, 1969.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is HEREBY ORDERED:

There is established in the Government of the District of Columbia a D.C. Public Space Committee.

PART I

Purpose.—The Committee is established to investigate the matter of permits issued by the District of Columbia for the use and occupancy of public space for private purposes.

PART II

Composition.—A. The D.C. Public Space Committee shall be composed of the following members:

1. Director, Department of Highways and Traffic, D.C. (who shall serve as Chairman of the Committee),
2. Director, Department of Sanitary Engineering, D.C.,
3. Director, Department of Economic Development, D.C.,
4. An Assistant Corporation Counsel to be designated by the Corporation Counsel, D.C.,
5. Assistant to the Commissioner for Housing Programs.

B. Each member of the D.C. Public Space Committee may be represented at a meeting of the Committee by an alternate designated by him from among his senior assistants to serve on said Committee and such alternate is authorized to exercise at meetings of said Committee all of the powers vested in the member whom the alternate represents.

PART III

Functions.—A. The Committee shall investigate matters of permits issued by the District of Columbia for the use and occupancy of public space for private purposes (including public utilities) to determine whether the District's interests are properly protected and safeguarded in all cases.

B. The Committee shall recommend changes in, or additions to, language of protecting clauses in permits to accomplish uniformity in such protecting clauses and maximum protection to the District, or any modification of procedure in such cases as may be necessary or desirable to accomplish maximum protection to the District.

PART IV

Authority to make final determinations.—A. The D.C. Public Space Committee is hereby authorized to make final determination in all cases relating to requests for use of public space, exclusive of those involving the closing of streets and alleys and the designation of business streets in order to permit sidewalk cafes.

B. All determinations by the D.C. Public Space Committee shall be by unanimous vote and those cases in which complete agreement cannot be reached by the Committee members present and voting shall be referred to the Commissioner for resolution.

PART V

Compensation.—Members of the Committee shall serve without compensation.

PART VI

Administration.—The Director, Departments of Highways and Traffic shall provide the necessary administrative and staff services required by the Committee.

PART VII

Repeal of previous orders.—Commissioners' Order No. 54–1861 of September 2, 1954, as amended, is hereby repealed and those other Orders, or parts of Orders, in conflict with the provisions of this Order, are to the extent of such conflict hereby repealed.

PART VIII

Effective date.—This Order shall become effective immediately.

ORGANIZATION ORDER NO. 24.—ADVISORY COMMITTEE ON EMERGENCY MEDICAL SERVICES

(Organization Order No. 24, Commissioner's Order No. 69–591, Oct. 14, 1969.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, it is HEREBY ORDERED THAT:

There is hereby established in the Government of the District of Columbia the Advisory Committee on Emergency Medical Services.

PART I

Purpose.—The Advisory Committee on Emergency Medical Services shall advise and assist the Commissioner in developing standards and regulations governing ambulances, equipment and supplies, personnel and training, communications, and the emergency care and treatment of the injured or suddenly-ill at the scene of their injury or illness, in transport, or at the emergency treatment facility.

PART II

Functions.—The Committee shall advise and assist the Commissioner for the District of Columbia in:

1. Developing a comprehensive plan for emergency medical services.
2. Coordinating the activities of lay and professional groups and organizations essential to the improvement of the community's emergency medical services program.
3. Coordinating the requirements for contract agreements between the District of Columbia and surrounding state jurisdictions to insure reciprocity of standards and regulations in the Washington metropolitan area.
4. Reviewing the needs of the community on a continuing basis, including the need for further technological training.
5. Performing such other functions as the Commissioner may assign to the Committee relative to emergency medical services.

PART III

Composition and membership.—The Committee shall be composed of:

a. Representatives from:

1. Medical Society, District of Columbia.

2. American Academy of Orthopaedic Surgeons on Trauma, District of Columbia.
3. Medico-Chirurgical Society.
4. American College of Surgeons.
5. District of Columbia Council.
6. Department of Public Health, District of Columbia.
7. Department of Motor Vehicles, District of Columbia.
8. Metropolitan Police Department, District of Columbia.
9. Ambulance Service, District of Columbia Fire Dept.
10. Board of Police and Fire Surgeons, District of Columbia.
11. Corporation Counsel, District of Columbia.
12. Coroner, District of Columbia.
13. American Red Cross, District of Columbia.
14. Hospital Council of the National Capital Area.
15. Health Facilities Planning Council of Metropolitan Washington, District of Columbia.
16. Ambulance Association of the District of Columbia.

b. Up to 10 residents, including representatives of citizens organizations, appointed by the Commissioner.

The Chairman of the Committee shall be designated by the Commissioner. The Assistant to the Commissioner for Human Resource Programs shall arrange for the designation of an Executive Secretary to serve the Committee.

PART IV

Terms of office.—Members, other than those representing agencies of the District of Columbia Government, shall serve for three years, except for initial appointments, as follows: Of the persons first appointed as members of the Committee, one-third shall be appointed for three years, one-third for two years, and the remainder for one year. Should a vacancy occur through death, incapacity, removal, or resignation of a member, a successor shall be appointed to complete the unexpired term of that member. After expiration of his term, each member shall continue to serve until his successor is appointed and qualified. Members shall serve for not longer than two full consecutive terms.

PART V

Organization.—The Committee shall establish work groups structured as deemed necessary to accomplish its mission. The Committee shall meet at least once each quarter at the call of the Chairman; the work groups, as required, at the call of each elected work-group chairman. The Committee shall determine its own procedures consistent with this Order to implement the performance of its functions.

PART VI

Compensation.—Members shall serve without compensation but appropriate expenses will be reimbursed as indicated in Part VII of this Order.

PART VII

Administration.—The Executive Secretary to the Committee shall be responsible for Committee administration and shall provide it with the necessary staff services. Expenses incurred by the Committee as a whole, or its individual members, when authorized by the Assistant to the Commissioner for Human Resource Programs, or his designee, will become an obligation against funds designated for that purpose.

PART VIII

Reports.—Reports and recommendations of the Committee for standards and regulations as set forth in Part I of this Order shall be forwarded to the Commissioner for consideration. Release of reports and recommendations shall be at the discretion of the Commissioner, or his designee.

PART IX

Effective date.—The provisions of this Order shall become effective immediately.

ORGANIZATION ORDER NO. 25 [1]—DISTRICT OF COLUMBIA BOARD OF LABOR RELATIONS

(Organization Order, Commissioner's Order No. 70–229, June 19, 1970.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, It is HEREBY ORDERED THAT:

There is hereby established in the Government of the District of Columbia a Board of Labor Relations.

See footnote at end.

PART I

Policy.—The Government of the District of Columbia firmly supports the principle that, consistent with the paramount public interest, the efficient administration of the D.C. Government and the well being of employees require that an orderly and constructive relationship be maintained between employees and management.

Unresolved disputes in the public service are injurious to the public, the government and the employees. Protection of the right of employees to organize and bargain collectively safeguards the public and employees from injury, impairment and interruptions and removes certain recognized sources of strife and unrest by encouraging practices fundamental to the friendly adjustment of disputes.

It is the policy of the District of Columbia Government to eliminate the causes of obstructions to the orderly and efficient operation of government by encouraging the practice of collective bargaining, by protecting the right of employees to organize and to designate representatives of their own choosing, and by providing procedures for preventing the interference by employers and employees with the legitimate rights of the other.

PART II

Composition and membership.—1. The Board of Labor Relations shall consist of five members. The members of the Board shall have expertise in the fields of labor-management relations and shall possess the integrity and impartiality necessary to protect the public interest as well as the interest of the District of Columbia and its employees. Members shall hold no other full- or part-time office for which compensation is paid from District funds or from Federal grants to the District of Columbia; nor shall members receive compensation from labor organizations representing District Government employees.

2. The members of the Board shall be appointed by the Mayor in the following manner:

a. Two members shall be chosen from lists of three names proposed by each labor organization representing a significant number of District Government employees or units of employees in agencies subject to the labor-management relations program of the Mayor, as set forth in the District Personnel Manual. Both labor members shall not be appointed from a list submitted by the same labor organization, unless that person's name appears on more than one list.

b. Two members shall be chosen from a list of five names proposed by an ad hoc committee representing management within the District Government. This committee shall be selected from among the directors of those departments and agencies subject to the labor-management relations program of the Mayor in which there is a substantial degree of representation by labor organizations.

c. The four members selected as above shall propose a list of three names to the Mayor, from which the Mayor shall select an impartial fifth member, who shall be Chairman. If the members cannot agree on a list of nominees within 30 days, the Mayor shall select a Chairman.

d. The Mayor may ask that additional names be submitted.

3. The terms of office shall be three years. In the case of the initial selections, the Chairman shall serve for three years, one labor and one management representative shall serve for two years, and one of each shall serve for one year. The short terms shall be chosen by lot. All members shall be eligible for reappointment.

4. Any member of the Board may be removed for cause, after having been a given a copy of the charges against him and an opportunity to be heard in person or by counsel in his defense upon not less than 10 days notice.

5. The procedure for filling a vacancy resulting from the expiration of a term of office shall be initiated at least 30 days prior to the expiration. Each member shall hold office until his successor is appointed and has qualified. If a vacancy occurs during a term, the new appointee shall hold office for the remainder of the unexpired term and until a successor is appointed and has qualified.

6. If at any time any matter comes before the Board in which any member has any interest, direct or indirect, other than that of a taxpayer, the member shall publicly

so state and his statement shall be recorded in the minutes of the meeting. He shall thereafter be disqualified from participation in the consideration of said matter.

PART III

Duties and powers:

1. To determine in disputed cases appropriate bargaining units and related issues.

2. To resolve appeals concerning the method of determining majority status and over the conduct of elections, and to certify exclusive bargaining representatives.

3. To decide whether unfair labor practices have been committed and issue an appropriate remedial order binding on the parties, or to make recommendations to the Mayor as provided in paragraph 18(d)(2) of Chapter 25A, District Personnel Manual.

4. To resolve impasses through factfinding or final and binding arbitration; to remand disputes if it believes further negotiations are desirable or if the matter comes under the jurisdiction of another authority.

5. To make a final determination as to whether a matter is within the scope of collective bargaining.

6. To decide whether a dispute shall be subject to a grievance procedure, and to consider appeals from arbitration awards pursuant to a grievance procedure. Such awards may be reviewed only for reasons that the arbitrator was without or exceeded his jurisdiction; the award on its face is contrary to law and public policy; or was procured by fraud, collusion, or other similar and unlawful means.

7. To conduct investigations, hear testimony, and take evidence under oath at hearings on any matter subject to its jurisdiction.

8. To administer oaths or affirmations and to require the attendance of witnesses with any necessary records or other records which have a bearing on the dispute. However, regulations dealing with the confidentiality of personnel files shall not be abrogated.

9. To make final decisions and to take appropriate action on charges of failure to adopt, subscribe or comply with the Standards of Conduct for Labor Organizations.

10. To make recommendations concerning desirable revisions or amendments to Chapter 25A, District Personnel Manual.

11. To adopt rules and regulations for the conduct of its business, and the carrying out of its powers and duties.

12. To consider matters that would otherwise be within its jurisdiction arising in agencies not subject to Chapter 254, District Personnel Manual under such terms and conditions as the Board by regulation may prescribe.

13. To delegate any of the functions of the Board to panels of three of its members, each panel consisting of the Chairman, one labor member and one management member.

14. To establish and maintain a list of mediators, factfinders and arbitrators, and to appoint same as provided in Chapter 25A, District Personnel Manual.

PART IV

Compensation.—Members of the District of Columbia Board of Labor Relations shall be intermittent employees of the District of Columbia and shall receive compensation when actually performing services as members of the Board.

PART V

Oath of office.—Each member of the Board before entering upon the discharge of his duties as such member shall take an oath or affirmation to support the Constitution of the United States and to faithfully discharge the duties imposed upon him as such member.

PART VI

Staff.—The Board may appoint such staff as it determines necessary within the limits of available appropriations. Interim staff assistance may be furnished by the Personnel Office.

PART VII

Effective date.—The provisions of this order shall become effective immediately.

[1] Number supplied, see District of Columbia Register, Aug. 10, 1970, Vol. 17, No. 3, p. 65.

ORGANIZATION ORDER NO. 26.—D.C. SPANISH COMMUNITY ADVISORY COMMITTEE

(Organization Order No. 26, Commissioner's Order No. 70–284, July 30, 1970.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, IT IS HEREBY ORDERED THAT:

There is hereby established in the Government of the District of Columbia the D.C. Spanish Community Advisory Committee.

PART I

Purpose.—The purpose of the Committee is to advise the Commissioner of the District of Columbia and the Director of the Department of Human Resources on matters affecting the Spanish-speaking community of the District of Columbia, with especial regard to that community's ethnic and minority status.

PART II

Functions.—The Committee shall perform the following:

1. Recommend new plans, policies, regulations and statutes including, but not limited to, new, or changes in existing ones, pertaining to matters of health, welfare, vocational rehabilitation, veterans' affairs, unemployment compensation, education and arts wherein problems are being encountered by the Spanish-speaking community of the District of Columbia because of their ethnic or minority status.

2. Study, evaluate, advise and make recommendations for plans, programs, activities and operations of all human resources functions, and liaison therewith, provided by the Government of the District of Columbia in which the Spanish-speaking community of the District of Columbia has a vested interest.

3. Act as a sounding board for proposals by officials of the Government of the District of Columbia on matters of interest to the Spanish-speaking community of the District of Columbia.

PART III

Composition and membership.—The Committee shall consist of not less than fifteen (15) members, who shall either be residents of the District of Columbia or whose place of employment is located in the District of Columbia, appointed by the Commissioner, based on their personal qualifications and affinity for matters affecting the Spanish-speaking community of the District of Columbia. Persons appointed to membership on the Committee shall be selected insofar as possible in such a way as to provide, in the aggregate, a maximum degree of perspective upon, and insight into, the human resources needs and desires of the Spanish-speaking community.

PART IV

Term of office.—Committee members shall serve for three (3) years except for initial appointments as follows: of the fifteen (15) members first appointed as members of said Committee, five (5) shall be appointed for one (1) year, five (5) for two (2) years and five (5) for three (3) years. The Committee will draw lots at its first meeting to determine initial terms of appointment. Should a vacancy occur through the death, incapacity, resignation, change of qualifications or removal of a member, a successor who meets any specific qualifications for that particular position may be appointed to complete the unexpired term.

PART V

Compensation.—Members shall serve without compensation, but appropriate expenses will be reimbursed, as indicated herein.

PART VI

Organization.—The Chairman and Vice-Chairman of the Committee shall be named by the Commissioner of the Government of the District of Columbia.

The Committee shall meet at the call of the Chairman (in his absence, the Vice-Chairman) or at the call of a majority of the membership. Additionally, the Committee may be convened at the call of the Commissioner of the Government of the District of Columbia or the Director of the Department of Human Resources, should interim matters of interest to the Spanish-speaking community of the District of Columbia arise.

PART VII

Administration.—The Director of the Department of Human Resources shall assist the Committee in matters of administration of the Committee and shall provide it with necessary staff services and space as needed. Expenses incurred by the Committee as a whole, or by individual members, when authorized by the Director on behalf of the Commissioner, will become an obligation against funds so designated.

PART VIII

Reports.—Reports and recommendations of the Committee shall be furnished to the Commissioner of the District of Columbia and may be released at such times and under such circumstances as the Commissioner may determine.

PART IX

Effective date.—The provisions of this Order shall become effective on and after August 1, 1970.

ORGANIZATION ORDER NO. 27.—MAYOR'S COMMITTEE ON FOOD, NUTRITION AND HEALTH

(Organization Ord. No. 27, Commissioner's Order No. 70–307, Aug. 3, 1970, as further amended Nov. 17, 1970.)

By virtue of the authority vested in me by Reorganization Plan No. 3 of 1967, IT IS ORDERED THAT:

There is hereby established in the Government of the District of Columbia the Mayor's Committee on Food, Nutrition and Health.

PART I

Functions.—The Committee shall:

1. Advise the Commissioner, through study and assessment, relative to the nature and extent of feeding and nutritional programs in the District of Columbia.

2. Prepare reports to the Commissioner from time to time highlighting the adequacy and the gaps in such programs.

3. Advise the Commissioner on development of operational models intended to achieve coordinated and adequate feeding and nutritional programs in the District of Columbia.

PART II

Composition and membership.—The Mayor's Committee on Food, Nutrition and Health shall comprise the following members:

A. Six appointed by the Commissioner from professional organizations primarily concerned with food and nutrition;

B. Six appointed by the Commissioner from organized city-wide groups;

C. Nine, of whom one shall be appointed by the Commissioner from each of the nine Service Areas; and

D. Five appointed by the Commissioner from the city at large, at least one of whom must be concerned with public school education.

Members shall be residents of the District of Columbia; may not be employed in local or federal government programs relating to food, nutrition and health; and must have demonstrated evidence of community activity and concern in these areas.

These members shall serve terms of three years, except for initial appointments which shall be as follows: eight shall be for one year, nine shall be for two years, and nine shall be for three years. The Committee shall draw lots at its first meeting to determine the terms of the members. If a vacancy occurs through death, incapacity, removal or resignation of a member, a successor shall be appointed to complete the unexpired term of that member. After expiration of his term, each member shall continue to serve until his successor is appointed and qualified.

PART III

Compensation.—Members of the Committee shall serve without compensation; however, appropriate expenses may be reimbursed as indicated in Part IV of this Order.

PART IV

Organization and administration.—The officers of the Committee shall be elected by the Committee from amongst its members. The Director of the Department of Human Resources shall assist the Committee in matters of administration and shall provide it with necessary staff services and space as needed. Other departments and agencies, including the Board of Education, shall provide full cooperation and assistance in the work of the Committee. Expenses incurred by the Committee as a whole, or by individual members, when authorized by the Director of the Department of Human Resources, shall become an obligation against funds so designated.

PART V

Effective date.—The provisions of this Order shall become effective immediately.

ORGANIZATION ORDER NO. 101.—OFFICE OF THE RECORDER OF DEEDS

(Organization Ord. No. 101, 63–197, Jan. 24, 1963, as corrected and amended Mar. 13, 1963 (63–703), and Oct. 22, 1968, repealing Organization Ord. No. 130, dated Apr. 26, 1962, relative to the Office of the Recorder of Deeds, and superseding Organization Ord. No. 101, 54–1980, dated Sept. 16, 1954, as amended (Oct. 14, 1954, Nov. 30, 1954, June 10, 1955, Feb. 19, 1960, and May 29, 1963).)

* * * * *

PART IV

Functions.—The functions of the Office of the Recorder of Deeds shall include, but not be limited to, the following in accordance with the delegations contained in Part I herein:

A. Serves as an office of record for the recording, filing and handling of all public records in the form of deeds, deeds of trust, motor vehicle liens, chattel mortgages, notices of foreclosure, contracts and other instruments in writing affecting a right, title or interest in real and personal property in the District of Columbia.

* * * * *

J. Serves as an office of record for the receipt, filing, indexing, mailing and handling of notice of foreclosure sale received pursuant to Public Law 90–566 (D.C. Code, Section 45–615, as amended).

ORGANIZATION ORDER NO. 104.—DEPARTMENT OF VOCATIONAL REHABILITATION

(Organization Ord. No. 104. 54–2310, Oct. 28, 1954, as amended Nov. 19, 1957, Mar. 30, 1965, and Dec. 26, 1968.)

* * * * *

PART IV

* * * * *

H. Establishes, maintains and administers a register of blind persons residing in the District of Columbia, as provided by P.L. 90–458. Provides, under regulations prescribed by the District of Columbia Council, information from the register of such nature as will, or may be, of assistance in planning of improved facilities and services for blind persons, and in the restoration and conservation of sight. Makes available in the form of statistical abstracts or digests information contained in the register and from reports furnished for inclusion in the register, provided the identity of persons referred to in either the reports or register are not disclosed in the abstracts or digests.

ORGANIZATION ORDER NO. 107.—HACKERS' BOARD

[This Org. Ord. was replaced and amended by Org. Ord. No. 13, dated Aug. 15, 1968]

ORGANIZATION ORDER NO. 108.—CITIZENS' TRAFFIC BOARD

(Organization Ord. No. 108, 55–888, May 17, 1955, as amended Feb. 18, 1959, Sept. 12, 1961, Dec. 12, 1961, Mar. 27, 1962, and July 11, 1967.)

* * * * *

PART III

Composition and membership:

1. The Citizens' Traffic Board shall consist of not to exceed 25 members appointed by the Board of Commissioners and subject to removal at the discretion of the Board of Commissioners. except that during the perioa April 1, 1962, to April 1, 1963, the Citizens' Traffic Board shall consist of not to exceed 27 members: *Provided,* That

if, during such period one or more members of such Board is or are separated therefrom by death, resignation or otherwise, such member or members may be replaced so that the membership of the Board shall not, during such period, exceed 26 if one member is so separated and shall not exceed 25 if two or more members are so separated. Members shall hold office for terms of three years, except that of the initial appointments one-third shall serve for one year, one-third for two years, and one-third for three years. Should a vacancy occur through the death, incapacity or resignation of a member, a successor may be appointed to complete the unexpired term and in the same manner as regular appointments. No person shall serve more than two consecutive terms but may be reappointed after a lapse of one year. Appointments scheduled to terminate or begin on Feb. 18, 1962, shall instead terminate or begin on Apr. 1, 1962. April 1 shall subsequently be the regular date of rotation of appointments each year.

In addition to the 25 appointed members, the Chairman of the Traffic Safety Committee of the Federation of Citizens' Associations and the Chairman of the Traffic Safety Committee of the Federation of Civic Associations shall serve as ex officio members of the Citizens' Traffic Board.

* * * * *

ORGANIZATION ORDER NO. 109.—Revised

ESTABLISHING THE POSITION OF DIRECTOR OF COMMUNITY RENEWAL, AN OFFICE OF COMMUNITY RENEWAL PROGRAMMING AND AN OFFICE OF RENEWAL OPERATIONS

Organization Order No. 109, 67-302, Mar. 14, 1967, ordered that: Organization Order No. 109, dated May 31, 1955, as amended, is hereby rescinded and replaced in its entirety as follows:

PART I

Policy.—The Government of the District of Columbia, working in close liaison and cooperation with the National Capital Planning Commission, the National Capital Housing Authority, the Redevelopment Land Agency, the National Capital Transportation Agency, the President's Council on Pennsylvania Avenue, and other interested agencies, in accordance with the District of Columbia Redevelopment Act of 1945, as amended, and the Housing Act of 1954, dedicates itself, and such of its resources and facilities as are available for such purpose, to the prevention and the elimination of slums, blight and other unhealthful or unsafe living and environmental conditions in the District of Columbia.

PART II

Director of Community Renewal.—There is hereby established the position of Director of Community Renewal.

A. *Purpose.*—To provide the Board of Commissioners with a single official responsible to them for carrying out the District of Columbia Government's functions in the planning and conduct of the programs for urban development and for the elimination and prevention of slums and blight, and for carrying out the Six-Year Public Works program.

B. *Functions.*—The Director of Community Renewal, working in close coordination with the National Capital Planning Commission, the National Capital Housing Authority, the Redevelopment Land Agency, the National Capital Transportation Agency, the President's Council on Pennsylvania Avenue, and other public and non-profit agencies and groups, shall take the initiative for the Board of Commissioners in:

1. Preparation of plans and schedules for the execution of the overall programs for urban development and for the elimination and prevention of slums and blight, and submittal of such plans and schedules together with necessary supporting data to the Board of Commissioners for their review and approval.

2. Integration of all operations of all departments and agencies of the District of Columbia Government, including those pertaining to the public works program and the maintenance of working liaison with public agencies, as they relate to the urban renewal and slum prevention program.

3. Presentation and interpretation of views and objectives of the Board of Commissioners to other public agencies having roles in the program, and to civic, neighborhood, and business organizations, and the maintenance of continuous, harmonious relationships with such organizations in policy and operational aspects of the program, with the objective of securing coordinated community action as required.

4. Continuing review and evaluation of: (1) the urban renewal and slum prevention program and its planning, (2) the procedures and techniques employed in its execution, (3) the sufficiency of codes and regulations, and (4) the adequacy of organizational relationships; and the development and presentation to the Board of Commissioners of recommendations for such action as may be required to correct deficiencies in the program, speed up its operations, or otherwise to improve its effectiveness.

5. Preparation and implementation of a Community Renewal Program which will encompass the long-range needs in the District of Columbia for urban renewal and slum prevention.

PART III

Office of Community Renewal Programming.—There is established under the direction and control of the Director of Community Renewal, an Office of Community Renewal Programming.

A. *Purpose and functions.*—The Office of Community Renewal Programming is established for the purpose of advising and assisting, and shall perform functions necessary to advise and assist the Director of Community Renewal in:

1. Completion, revision and updating of the Community Renewal Program.

2. Preparation of the Six-Year Capital Improvements Program, in collaboration with the Department of General Administration.

3. Preparation of a Six-Year Housing Program as a segment of the Community Renewal Program.

4. Preparation of a detailed program for the Urban Progress Centers.

5. Communication with civic, neighborhood and business organizations to obtain reaction and assistance in the preparation of plans and programs for the community.

6. Coordination with the Comprehensive Plan.

7. Review of all renewal, public housing and other social and economic projects and programs for conformance to the Community Renewal Program.

8. Preparation of special detailed studies relating to the Community Renewal Program and its implementation.

9. Provision of Staff assistance to the Commissioners' Planning and Urban Renewal Advisory Council.

10. Maintenance of liaison with the Assistant Engineer Commissioner for Planning and the Assistant Engineer Commissioner for Operations.

The senior member of the Office of Community Renewal Programming shall assist the Director of Community Renewal, as assigned, in carrying out the latter's overall administrative responsibilities and shall serve as Executive Secretary to the Commisioners' Planning and Urban Renewal Advisory Council.

PART IV

Office of Renewal Operations.—There is established under the direction and control of the Director of Community Renewal an Office of Renewal Operations.

A. *Purpose and functions.*—The Office of Renewal Operations is established for the purpose of advising and assisting, and shall perform functions necessary to advise and assist the Director of Community Renewal in:

1. Preparation of the Annual Workable Program.

2. Coordination of relocation activities on an interagency basis.

3. Coordination of interdepartmental activities for renewal, public housing and development operation.

4. Expedition and coordination of all renewal operations consistent with established time schedules for each project or program.

5. Evaluation of improvements to the procedures for the coordination of renewal operations.

6. Cooperation with civic, neighborhood and business organizations to elicit participation and assistance in the execution of renewal projects and programs in the community.

7. Promotion of non-profit housing and provision of assistance to prospective sponsors or developers of non-profit housing projects.

8. Provision of staff assistance to the Urban Renewal Operations Committee.

9. Maintenance of liaison with the Assistant Engineer Commissioner for Operations and with the Assistant Engineer Commissioner for Planning.

The senior member of the Office of Renewal Operations shall assist the Director of Community Renewal, as assigned, in carrying out the latter's overall administrative responsibilities and shall serve as Executive Secretary to the Urban Renewal Operations Committee.

PART V

Personnel and funds.—Personnel and funds shall be provided for the Office of Community Renewal Programming and the Office of Renewal Operations within the limits of available appropriations which may properly be used for such purpose.

PART VI

Effective date.—This Order shall be effective on and after April 14, 1967.

ORGANIZATION ORDER NO. 112.—BOARD OF APPEALS AND REVIEW

(Organization Ord. No. 112, 55–1500, dated Aug. 11, 1955, as amended July 12, 1960, Aug. 9, 1960, Dec. 15, 1960, Apr. 25, 1961, Mar. 15, 1962, Dec. 4, 1962, Apr. 13, 1965, Mar. 7, 1968, and Aug. 6, 1968.)

PART I

Board of Appeals and Review:

A. *Establishment.*—The Board of Appeals and Review is constituted as hereinafter described.

B. *Purpose, composition, qualifications of members and terms of office:*

1. The Board of Appeals and Review (hereinafter referred to as "the Board") is an administrative agency in the Government of the District of Columbia providing a final administrative remedy in those cases assigned to it.

2. The Board shall consist of twenty-five members appointed by the Commissioner. The Chairman and Vice Chairman of the Board shall be designated by the Commissioner: *Provided,* that the Vice Chairman shall exercise the authorities of the Chairman only in the absence of said Chairman.

3. Of the twenty-five members of the Board:

a. Eight shall be full-time employees of the District of Columbia of grade GS–13 or higher (hereinafter referred to as "District members"), but no such member shall be an employee of the District of Columbia in the Office of the Corporation Counsel. District members shall receive no additional compensation for work performed by virtue of their appointment or service as members of the Board.

b. Seventeen shall be intermittent employees of the District of Columbia (hereinafter referred to as "Public members"), each of whom resides in said District or owns in his own name real property therein, eight of whom shall be members of the Bar of the United States District Court for the District of Columbia who have had at least five years' experience in the active practice of law in the District of Columbia, and nine of whom shall be persons who possess, to the extent that the Commissioner may deem it necessary or desirable, insight and perspectives in the fields of architecture, construction, finance, medicine and social service, and with respect to whom the Commissioner shall take into account their qualifications, experience and community interests. Notwithstanding the preceding sentence, one or more physicians who are non-residents and who do not own real property in the District but who are engaged in the practice of medicine therein and are otherwise qualified shall be eligible for appointment as public members. Public members shall receive compensation when actually performing service as members of the Board.

4. The term of office of each member of the Board shall be three years. Every vacancy shall be filled only for the unexpired portion of the term. After the expiration of his term each member shall continue to serve until his successor has been appointed and qualified. Members shall be appointed, and may be removed, by the Commissioner. No person who has served continuously for six years or more as a member of the Board shall be reappointed as a member until the expiration of one year from the end of such service.

5. Every member of the Board shall take an oath of office as follows:

> "I, _____, having been duly appointed by the Commissioner as a member of the Board of Appeals and Review, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of the said Board to the best of my ability without fear or favor; that I will administer justice without respect to persons, and do equal right to the poor and to the rich, and that I will well and faithfully discharge said duties, so help me God."

C. *Organization:*

1. There are hereby established such administrative, secretarial, stenographic and clerical positions as may be appropriate for the performance of duties incident to the Board's operations.

2. a. Except as herein otherwise provided, all powers, functions and authorities of the Board shall be exercised by Hearing Committees of the Board whose actions and decisions shall be deemed the actions and decisions of the Board, but the Chairman, may, pursuant to the rules prescribed by the Corporation Counsel, act for the Board in matters arising prior to hearing.

b. There shall be such number of Hearing Committees as may be established, from time to time, by the Chairman. Each Hearing Committee shall consist of three members of the Board, designated from time to time by the Chairman, one of whom shall be a member of the Bar of the United States District Court for the District of Columbia who has had at least five years' experience in the active practice of law in the District of Columbia and shall be presiding member. One member of each Hearing Committee shall be a District member of the Board; Provided, That no such District member shall be designated to sit on any Hearing Commitee which hears an appeal from action by an officer or employee of any Department or Office in which he is employed. A quorum of a Hearing Committee shall be all three members thereof, but decisions may be by majority vote. The Chairman is authorized (i) to designate himself as a member of a Hearing Committee; or (ii) to serve *ex officio* as a fourth, non-voting member of a Hearing Committee.

c. The Chairman shall maintain one or more dockets of all cases to be considered by the Board and he shall assign each such case to a Hearing Committee for action. The Chairman may, at any time before the commencement of a hearing, reassign any case from one Hearing Committee to another Hearing Committee.

d. Subject to the provisions of the second paragraph of Part II (a) of Reorganization Order No. 50, as amended, each Hearing Committee shall exercise the following functions:

(i) Conduct all hearings in cases assigned to it.

(ii) In each case be responsible for the preparation and maintenance of an adequate record of its proceedings and, in the absence of a stenographic transcript, prepare a summary of the evidence, and after the parties have been afforded an opportunity to examine the same and to propose amendments thereto and corrections thereof which shall be acted upon by the Committee, officially approve the same.

(iii) In each case make findings of fact, conclusions of law, and a decision sustaining, reversing, or modifying the action from which the appeal is taken or, when appropriate, dismiss the appeal or remand the case for further consideration.

(iv) File its findings of fact, conclusion of law and decision in each case with the Chairman, who shall transmit a copy thereof to each of the parties.

(v) When requested by the applicant or licensee, conduct a hearing on any proposed denial, revocation, or suspension of a pawnbroker's license and prepare thereon findings of fact, conclusions of law, and recommendations for disposition by the director of Licenses

and Inspections. Not less than five days (exclusive of Saturdays, Sundays, and legal holidays) before forwarding to the Director such findings, conclusions, and recommendations, together with all documents and exhibits introduced in evidence, furnish to the applicant or licensee, or his attorney of record, a copy of such findings, conclusions, and recommendations, together with a letter advising that the applicant or licensee may, within such five-day period, or any extension thereof which may be granted by the Director, file with the Director any exceptions or objections he may have to such findings, conclusions, or recommendations.

e. The Chairman or a Hearing Committee, through its presiding member, may, without submission to the Commissioner, request directly of the Corporation Counsel his opinion upon any question of law involved in any case appealed to the Board.

f. Each Hearing Committee, through its presiding member, is authorized to request directly of the Corporation Counsel his assistance in putting into proper form such Committee's findings of fact, conclusions of law, and decision, in any case pending before such Committee.

3. Upon the request of the officer of the District of Columbia from whose decision, or action, or proposal to act, an appeal has been taken to the Board, the Corporation Counsel may assign one of his Assistants to represent the District before the Board.

D. *Functions:*

1. The Board shall, through Hearing Committees, consider on appeal decisions in the following types of cases, where error in such decisions is alleged by the appellants, and make a final determination sustaining, reversing, or modifying the action from which the appeal is taken or, when appropriate, dismiss the appeal or remand the case for further consideration:

Class A cases.—Appeals from decisions made by the Director or Deputy Director of Licenses and Inspections under the Housing Regulations.

Class B cases.—The Board of Appeals and Review, in its consideration of appeals from decisions made by the Director or Deputy Director of Licenses and Inspections under the Housing Regulations and under Articles 8 through 8–I of Chapter 6 of the Building Code may in its discretion grant variances as authorized by such Housing Regulations and such Articles 8 through 8–I of Chapter 6 of the Building Code and shall, in addition, consider and make final decisions on cases under consideration for the granting of a variance as authorized under the Housing Regulations and under Articles 8 through 8–I of Chapter 6 of the Building Code that may be referred without final determination by the Director or Deputy Director of Licenses and Inspections.

Class C cases.—Appeals submitted by applicants for licenses, permits, and certificates, from actions taken by responsible officials of the Department of Licenses and Inspections with respect to denial, suspension or revocation of a license, permit, or certificate: Provided, That in any case in which a license may issue only with the approval of the Chief of Police, the Board of Appeals and Review shall have authority to set aside the decision of the Department of Licenses and Inspections whenever such decision is based upon an adverse recommendation of the Chief of Police, which recommendation the Board of Appeals and Review finds is arbitrary, capricious, or not supported by substantial evidence.

Class D cases.—Appeals by persons directed by responsible officials of the Department of Licenses and Inspections to act or to refrain from acting, in accordance with inspectional or regulatory requirements (excluding dangerous and unsafe structures and excavations).

Class E cases.—Appeals from actions taken by the Fire Chief, the Director of Public Health, the Chief of Police, or the Director of Licenses and Inspections, or any designated agent of each such official, under the provisions of the Housing Regulations governing the removal of fences and sheds.

Class F cases.—Applications for review, pursuant to Section 4 of the Motor Vehicle Safety Responsibility Act of the District of Columbia, of orders issued or actions taken under such Act (D.C. Code, Title 40, Chapter 4). If, in the opinion of the Chairman of the Board, the notice of appeal filed in any case under this paragraph does not raise a question of fact, the following procedures shall be applicable thereto: (a) The appeal shall be considered and decided as the Chairman of the Board in his discretion determines, either by a Hearing Committee or by the Chairman of the Board; and (b) in lieu of holding a hearing and taking testimony the review shall be solely on the record on the case as made in the Department of Motor Vehicles.

Class G cases.—Appeals from decisions of the Police and Firemen's Retirement and Relief Board to which the Procedural Rules for Review of such appeals, as set forth in attachment to Organization Order No. 12 of August 6, 1968, shall be applicable.

Class H cases.—Such other matters as the Commissioner may assign to the Board for appeal or for review and consideration.

E. *Procedural rules:*

1. Each party to an appeal shall, if request therefor is made, be entitled to present oral argument before his appeal is decided.

2. The activities of the Board shall be considered investigations or examinations of municipal matters within the meaning of the Act of July 1, 1902 (D.C. Code, Sec. 1–237) and each of the Board's Hearing Committees and each member thereof shall possess the powers vested in the Commissioner by that Act.

3. Except as provided otherwise by this order, the Corporation Counsel shall prescribe, and from time to time may amend, rules governing the procedures of the Board and of its Hearing Committees, including the establishment of time limitations where not otherwise set forth, and the development of methods of perfecting appeals to the Board.

4. Where the Board has not decided an appeal from the denial of a license application by the end of the license year for which the application was made and the appellant has made timely application for a license for the new license year, the pending appeal shall not become moot at the end of the license year for which the earlier application was made, but shall be deemed also to be an appeal from the denial of an application for a license for the new license year. If an oral hearing has already been had on the appeal, no further oral hearing shall be required, but a further oral hearing shall be provided at the request of a party to the appeal who may have additional evidence to offer.

5. Upon application by any person aggrieved by any action, decision, or ruling made by the Director of Licenses and Inspections in the administration of the act providing for the regulation and licensing of pawnbrokers, the Board shall review and make a final determination affirming, setting aside, or modifying such action, decision, or ruling. In cases of denial, revocation, or suspension, such review shall be based upon the record and without a hearing by the Board.

* * * * *

ORGANIZATION ORDER NO. 117.—COMMISSIONERS' ADVISORY COUNCIL ON FIRE PREVENTION

(Oct. 4, 1956, as amended)

Part IV of Org. Ord. No. 8, dated Apr. 18, 1968, Commissioner's Order No. 68–290, revoked this Order to the extent the same is inconsistent with Org. Ord. No. 8.

ORGANIZATION ORDER NO. 118.—EMERGENCY AMBULANCE SERVICE

(Aug. 27, 1957)

Part IV of Org. Ord. No. 8, dated Apr. 18, 1968, Commissioner's Order No. 68–290, revoked this Order to the extent the same is inconsistent with Org. Ord. No. 8.

ORGANIZATION ORDER NO. 119.—EMERGENCY AMBULANCE SERVICE COMMITTEE

(Organization Ord. No. 119, 57–1669, Aug. 27, 1957, as amended June 23, 1959, May 21, 1963, Sept. 9, 1964, and July 11, 1968.)

* * * * *

PART III

Composition.—The following departments and agencies of the District Government shall designate one representative each to serve on the Emergency Ambulance Service

Advisory Committee; this representative shall have the authority to speak for his department or agency:

Fire Department.
Police Department.
Office of the Coroner.
Department of Public Health.
Board of Police and Fire Surgeons.
Community Mental Health Center.

Each private voluntary hospital maintaining one or more ambulances in the Emergency Ambulance Service may designate one representative to the Committee. The Public Health Advisory Council, Freedmen's Hospital. The Washington Hospital Center, the D.C. Medical Association, and the Medico-Chirurgical Society of D.C. Children's Hospital, Providence Hospital, Hadley Memorial Hospital, and Georgetown University Hospital each may designate one representative to the Committee. Such other organizations as the Commissioners admit to membership on the Committee may designate one representative each.

Organizations designating representatives to the Committee as stated above shall also designate alternate members to serve in the absence of the regular members.

Committee members and alternates shall serve without compensation and until the organization which they represent notifies the Committee Chairman of the appointment of their successor. It is the intent of the Commissioners that District departments and agencies and non-governmental organizations entitled to membership on the Committee shall keep current their designation of their representatives and alternates on this Committee.

* * * * *

ORGANIZATION ORDER NO. 121.—DEPARTMENT OF GENERAL ADMINISTRATION, FINANCE OFFICE

Part V of Organization Ord. No. 3, dated Dec. 13, 1967, Commissioner's Order No. 67–24, revoked this Order and abolished the department, offices and officers established thereunder.

ORGANIZATION ORDER NO. 122.—DEPARTMENT OF HIGHWAYS AND TRAFFIC

(Organization Ord. No. 122, 59–33, Jan. 8, 1959, amended Oct. 17, 1961, Oct. 22, 1964, Feb. 18, 1964, June 6, 1968, and Dec. 23, 1968.)

Reorganization Order No. 53, dated June 30, 1953, as amended, is hereby redesignated Organization Order No. 122, and amended to read as follows:

* * * * *

PART III

A, B, C. * * *

D. The Director shall order all construction projects involving both assessable and non-assessable facilities, within the framework of the programs for which he is responsible.

E. The Director shall have the authority to redelegate to department heads, based upon criteria which he shall establish, the functions of minor maintenance and repair of motor vehicles and repair of electronic equipment.

ORGANIZATION ORDER NO. 124.—PUBLIC INFORMATION UNIT (Described in Org. Ord. No. 2 as Public Affairs Office)

Part V of Organization Ord. No. 2, dated Dec. 13, 1967, Commissioner's Order No. 67–23, revoked this Order, and abolished the department, offices and officers established thereunder.

ORGANIZATION ORDER NO. 125.—DISTRICT OF COLUMBIA HUMAN RELATIONS COMMISSION

(Organization Ord. No. 125, 61–846, May 9, 1961, as amended Oct. 10, 1963, Jan. 30, 1964, Sept. 17, 1964, July 15, 1965, Jan. 23, 1968, and July 30, 1968.)

* * * * *

3. *Composition and term of office.*—The Council shall consist of twenty-five (25) members selected by the Commissioner. Persons appointed to serve on the Council shall be outstanding persons residing or having their principal places of business in the District of Columbia and representing a cross section of the viewpoints of the community. Members shall hold office for terms of three (3) years. Should a vacancy occur through the death, incapacity or resignation of a member, a successor shall be appointed to complete the unexpired term and in the same manner as regular appointments. No person who has served six years or more consecutively as a member shall be reappointed as such member until after the expiration of one year from the end of such service.

* * * * *

The name of the "Commissioner's Council on Human Relations" be changed to the

"District of Columbia Human Relations Commission."

Wherever there appears in the title, or body, of existing Orders the title of "Commissioner's Human Relations Council" the term shall mean the "District of Columbia Human Relations Commission."

ORGANIZATION ORDER NO. 127.—COMMITTEE ON EMPLOYEE CONDUCT

(Organization Ord. No. 127, 61–1430, Aug. 17, 1961, amended Nov. 3, 1967, by Org. Ord. No. 5.)

There is hereby designated a Committee on Employee Conduct composed of such persons as the Commissioner may designate.

* * * * *

ORGANIZATION ORDER NO. 140.—DEPARTMENT OF PUBLIC WELFARE

(Organization Ord. No. 140, 64–191, Feb. 11, 1964, Oct. 8, 1965, June 7, 1966, Dec. 11, 1967 [eff. Jan. 14, 1968], May 12, 1969, Nov. 18, 1969, and May 25, 1970.)

Reorganization Order No. 58, dated June 30, 1953, as amended [for history see Reorg. Ord. No. 58 in main edition] is hereby redesignated Organization Order No. 140, and amended to read as follows:

* * * * *

PART III

Director, Department of Public Welfare.—A. The Director, Department of Public Welfare, as head of the Department, and as agent of the Commissioners of the District of Columbia, where designated in municipal regulations, shall be responsible for developing and implementing a public welfare program consistent with Federal laws and programs and Commissioners' Orders. The Director shall perform all the functions vested in the Commissioners by the District of Columbia Public Assistance Act of 1962, except the adoption and promulgation of regulations, and the authority to waive any claim and release any lien under Section 18 of said Act. In carrying out these authorities and responsibilities, the Director shall be cognizant of and take into account the social obligations of the government to its people in as economical and business-like manner as possible, consistent with the intent of applicable laws and within the resources available. The Director shall consult with the Commissioners, or the designated Commissioner through whom the supervisory responsibility of the Commissioners is exercised, on matters which are of primary importance to the operation and activities of the Department.

* * * * *

D. The Department is designated as the District agency to administer or supervise the administration of a District plan to carry out the objectives of the Older Americans Act of 1965 (Public Law 89–73) and Federal regulations issued pursuant thereto, with respect to aged and aging residents of the District. The Director shall administer the District's plan with the advice and assistance of the District of Columbia Advisory Committee on Aging.

E. The Director of the Department of Public Welfare, in the performance of functions for which he is responsible, is hereby authorized to establish such organizational components thereunder with such specified functions as he deems appropriate.

F. The Department of Public Welfare is designated as the District Government agency responsible for determining individual eligibility to receive medical care under the Medical Assistance Program. This authority shall be exercised in accordance with standards established by the Department of Public Health which has been designated the single State agency in the District of Columbia to administer Title XIX of the Social Security Act.

PART IV

* * * * *

C. *Deputy Director for Family and Children Services.*—Plans, develops, and proposes policies and regulations for governing the family and children services provided by the Department. Implements and administers approved policies and regulations governing the family and children services provided to insure effectiveness of the direct assistance and services to individuals, families and children in the community. Initiates and administers policies and regulations to implement all public assistance and welfare laws (including, without limitation, the Social Security Act, the District of Columbia Public Assistance Act of 1962, and the Juvenile Court Act), and the care, custody, placement, and adoption of children. Directs administration of the system for determining eligibility for medical assistance under the District's Medicaid program. Directs the operation of all family and children services and exercises supervisory responsibility over the divisions concerned to insure proper implementation of policies and the maintenance of accurate standards of performance. Participates in overall departmental planning, budget justifications and implementation of the programs. Coordinates with the Director and the other deputies in regard to related activities. Maintains liaison with other appropriate District, State, Federal, and community agencies.

* * * * *

ORGANIZATION ORDER NO. 141.—DEPARTMENT OF PUBLIC HEALTH

(Organization Ord. No. 141, 64–193, Feb. 11, 1964, as amended Jan. 8, 1965, June 3, 1965, March 22, 1966, June 7, 1966, June 30, 1966, Feb. 7, 1967, June 29, 1967, Aug. 22, 1967, Aug. 24, 1967, and Nov. 14, 1968.)

Reorganization Order No. 52 (Commissioners' Order L.S. 4259–B), dated June 30, 1953, as amended, and Reorganization Order No. 57 (Commissioners' Order L.S. 4262–B), dated June 30, 1953, as amended Aug. 11, 1964, and Aug. 20, 1964, are hereby combined, amended, and redesignated Organization Order No. 141 to read as follows:

* * * * *

PART III

Director of Public Health, Department of Public Health.—

A. (Add the following at the end of par. A):

The Director shall administer or supervise the administration of such comprehensive health planning functions and such public health services as may be approved pursuant to sec. 314(a)(2) and sec. 314(d)(2) of the Public Health Service Act (as added by sec. 3 of the Comprehensive Health Planning and Public Health Services Amendments of 1966, P.L. 89–749).

* * * * *

D. The Director shall develop, administer and supervise a plan of Emergency Medical Care Services (other than Disaster) for the District of Columbia with the cooperation of the pertinent District of Columbia Government agencies and the participation of interested public and private organizations and individuals within the District of Columbia.

E. The Director, in consultation with the Heads of other District Departments where appropriate, shall be responsible for developing and executing a comprehensive program for the control and prevention of air pollution in the District of Columbia, as required by the District of Columbia Air Pollution Control Act of 1968 (P.L. 90–440).

F. The Director, in consultation and collaboration with appropriate public and private agencies, institutions, and organizations in the District of Columbia, and with the Secretary of Health, Education and Welfare, shall develop and execute a comprehensive program for the prevention of alcoholism, the rehabilitation of alcoholics, and the discouragement of the abuse of alcoholic beverages in the District of Columbia, as required by the District of Columbia Alcoholic Rehabilitation Act of 1967 (P.L. 90–452).

PART IV

* * * * *

A. *Associate Director for Administration.*—Plans, directs, and coordinates the administrative and business management of the Department. Under the Director, exercises full authority over the performance of the following staff and auxiliary functions: budget and finance; management analysis; manpower utilization; data processing; administration and custody of vital records of births, stillbirths, and deaths in the District of Columbia; administrative services, including building management and office services; and procurement and supply management on a centralized basis. Participates in, and assumes leadership responsibility for, developing departmental policies, and maintains and correlates the codified health regulations; examines the need for legislation and regulations, drafts recommended changes, and provides advice and assistance in related matters. Participates in, and assumes leadership for, financial policies and goals and for determining the Department's effectiveness in applying these policies and achieving these financial goals. Coordinates efforts with the Director and the Associate Directors and maintains liaison with appropriate District and Federal Government agencies and private health organizations; and supervises and directs the activities of the following organizational entities:

* * * * *

3. *Vital Records Division.*—Receives, maintains, secures, and edits vital records of births, stillbirths, and deaths in the District of Columbia; provides official copies of vital records to authorized persons. Evaluates existing statutes and regulations governing vital events and vital records and recommends changes in or additions to such statutes and regulations. Provides consultation to the Department, Funeral Directors and Undertakers Associations, the Coroner's Office, the medical associations, and lawyers with regard to the recording of vital events and vital records.

* * * * *

G. *Associate Director for Planning and Research.*—Responsible for the development of the Comprehensive Health Plan for the District of Columbia, for strengthening the cooperative relationship, and for the overall coordination of health planning of public, private, and voluntary organizations in the District of Columbia, Cooperates, assists in, and, where indicated, initiates health planning for the Washington Metropolitan Area. Directs the development of current and long range planning policy and actions for meeting the health needs of the District through public, private, and voluntary effort. Initiates studies, including research projects, to determine the scope, nature, and factors contributing to health resources available, recommends solutions, and when appropriate involves the Department of Public Welfare, the Department of Vocational Rehabilitation, the Board of Education, and other District departments. Keeps the Department abreast in the field of health planning by adopting and by informing key Department officials of new concepts employed by the Federal Government and by counterparts in other States. Directs the development and application of methods for evaluating the Department's health programs and in measuring progress toward attainment of established health program goals. Through consultation with public, private, Federal, professional, and citizen's organizations, and through contact with a representative sample of health services consumers, involves the community in planning for efficient utilization of health funds and manpower for the District of Columbia.

Programs Review and Development Division.—Provides staff support to all Directorates of the Department in developing programs and establishing priorities for solving identified health problems, in developing current and long range policy and action recommendations for meeting health needs of the District; assists in the review and support of the Department's budget and grants requests. Using quantitative and epidemiologic techniques and other modern sophisticated methods of program appraisal, periodically reviews and evaluates major health programs of the Department, determines weaknesses, and

recommends alternatives for program efforts or suggests other solutions to obtain efficient utilization of existing health resources. Provides staff support necessary for the Department to carry out its role as the designated District agency for comprehensive health planning. Develops departmental position papers as requested on laws, regulations, and special studies, which have an impact on health planning for the District of Columbia or the Washington Metropolitan Area.

Biostatistics Division.—Develops a relevant statistical base for decision-making for the Department, including statistical support in the development, implementation, and surveillance of all health and medical care programs of the Department. Develops statistical methods and indices necessary to meet the increasing emphasis being placed on program evaluation, including the design of methods to measure the health status of the District's population. Provides statistical tables and reports for distribution in the Department and elsewhere. For the Washington Metropolitan Area, assists in the development of: a statistical base for decision-making; statistical methods to measure health needs; and other statistical support required of the Department for aggressive participation in area-wide health planning.

Research Division.—Coordinates a continuing program of research to develop efficient means of providing health and medical care services for the District of Columbia. Provides consultation on and technical review of all proposed research and special projects of the Department and of other projects submitted to the Department in its role as the District Health Planning Agency. Initiates and participates in health service consumer-based studies, demonstration projects, and experiments in the Department to discover improved methods of providing health services within the scope of a comprehensive public health program. Cooperates, provides assistance, and, where possible, leads the way in eliminating duplication and overlap in projects or grants acquired in the Washington Metropolitan Area. Provides a clearinghouse service and maintains a register of all health-related research and special studies being conducted within the District of Columbia.

PART V

* * * * *

E. The Department shall be the sole agency responsible for administering or supervising the administration of the District's health planning functions under the plan required by sec. 314(a)(2) of the Public Health Service Act (as added by sec. 3 of the Comprehensive Health Planning and Public Health Services Amendments of 1966; P.L. 89–749).

F. The Department shall be the sole agency for the Commissioners responsible for the implementation of the plan for enhancing the quality of the interstate waters within the District and the enforcement of the water quality criteria adopted by the Commissioners pursuant to the Federal Water Pollution Control Act (70 Stat. 498; 33 U.S.C. 466), as amended by the Water Quality Act of 1965 (P.L. 89–234; 79 Stat. 903; and the Director shall make recommendations with respect to (1) regulations and legislation and (2) revisions of water quality criteria as may be needed to prevent, control, and abate water pollution within the District.

G. The Department, in cooperation with the Metropolitan Police Department, the Fire Department, the Department of Motor Vehicles, and the Department of Highways and Traffic, shall be the District agency responsible for the development, administration, supervision and periodic evaluation of the provisions of the D.C. Highway Safety Act of 1966 (23 U.S.C. 401 et seq., P.L. 89–564) insofar as it pertains to the training of drivers and the general public in medical self-help and first-aid education, medical criteria and medical evaluation processes for licensing drivers, procedures for chemical determination of blood-alcohol concentrations in persons driving under the influence of alcohol and in pedestrians involved in traffic accidents, and emergency medical services for prompt and proper medical care of the injured in traffic accidents.

H. The Department is designated as the agency of the District of Columbia to prepare a comprehensive program for the control and prevention of air pollution in the District of Columbia: *Provided,* That any agreements negotiated with governments and agencies of any State or political subdivisions thereof adjacent to the District of Columbia and any interstate or other regional agency representing any such State or political subdivision shall not become effective until approved by the Commissioner.

I. The Department is designated the agency of the District of Columbia to prepare and execute a comprehensive program to provide a continuum of appropriate services to intoxicated persons and chronic alcoholics, and to provide appropriate services necessary to aid in the prevention of chronic alcoholism. Such programs shall be executed in collaboration and cooperation with appropriate public and private agencies, organizations and institutions and with private industry.

* * * * *

ORGANIZATION ORDER NO. 142.—PUBLIC HEALTH ADVISORY

(Replaced by Org. Ord. No. 14 set out in this Appendix.)

ORGANIZATION ORDER NO. 143.—COMMISSIONERS' ADVISORY COUNCIL ON HIGHER EDUCATION IN THE DISTRICT OF COLUMBIA

(Replaced by Org. Ord. No. 15, set out in this Appendix.)

ORGANIZATION ORDER NO. 144.—INTERDEPARTMENTAL COMMITTEE ON AGING

(Organization Ord. No. 144, 64–632, Apr. 28, 1964, as amended Mar. 30, 1965, and Oct. 8, 1965.)

This organization order was redesignated as Organization Order No. 20, by Commissioner's Order No. 69–212, dated May 12, 1969, set out in this appendix.

ORGANIZATION ORDER NO. 147.—DEPARTMENT OF SANITARY ENGINEERING

(Organization Ord. No. 147, 65–1154, Aug. 19, 1965.)

Reorganization Order No. 28, dated Apr. 3, 1953, as amended [for history see Reorg. Ord. No. 28, in main edition] is hereby redesignated Organization Order No. 147, and amended Feb. 10, 1966, Jan. 10, 1967, and Aug. 12, 1968, to read as follows:

* * * * *

PART III

Director of Sanitary Engineering.—

* * * * *

D. The Department shall be the sole agency for carrying out the purposes of Sec. 206 of the Solid Waste Disposal Act (P.L. 89–272, Oct. 29, 1965) and shall take such action as necessary to provide for cooperation with the Department of Public Health and other District agencies so as to insure the full participation of the District in accomplishing the purposes of the act.

E. The Department of Sanitary Engineering is hereby designated as the "State Agency" for the District of Columbia for carrying out the purposes of Section 303, Title III, of the Water Resources Planning Act (July 22, 1965, Public Law 89–80).

F. The following authorities and functions are hereby delegated to the Director of Sanitary Engineering, together with authority to redelegate all, or portions thereof, as he deems appropriate.

1. *Free water allowances.*—To fix and grant allowances of water, without charge, to charitable institutions and churches within the District of Columbia in accordance with standards and limitations prescribed in D.C. Code, Section 43–1533, 1967 edition.

2. *Establishing miscellaneous fees.*—To establish fees for materials or services provided, in accordance with the provisions of the Plumbing Code of the District of Columbia, and for any other miscellaneous services or materials rendered which are of direct benefit to the applicants.

* * * * *

ORGANIZATION ORDER NO. 152.—SUPPLEMENT (Oct. 4, 1966)

Part IV of Org. Ord. No. 8, dated Apr. 18, 1968, Commissioner's Order No. 68–290, revoked this Order to the extent the same is inconsistent with Org. Ord. No. 8.

ORGANIZATION ORDER NO. 153.—METROPOLITAN POLICE DEPARTMENT
(Nov. 10, 1966)

Part IV of Org. Ord. No. 8, dated Apr. 18, 1968, Commissioner's Order No. 68–290, revoked this Order to the extent the same is inconsistent with Org. Ord. No. 8.

ORGANIZATION ORDER NO. 154.—DEPARTMENT OF CORRECTIONS

Org. Ord. No. 7, dated Dec. 26, 1967, Commissioner's Order No. 67–94, redesignated this Order as Order No. 7 and amended it to read as set out in Org. Ord. No. 7, printed elsewhere in this appendix. Part IV of Org. Ord. No. 8, dated Apr. 18, 1968, Commissioner's Order No. 68–290, revoked this Order to the extent the same is inconsistent with Org. Ord. No. 8.

ORGANIZATION ORDER NO. 155.—CORRECTIONAL ADVISORY COMMITTEE

(Organization Order No. 155, 67–174, February 7, 1967, as amended Nov. 27, 1968.)

There is hereby created in the District of Columbia a committee of citizens, representing the community at large, to be known as the Correctional Advisory Committee. Part IV of Org. Ord. No. 8, dated Apr. 18, 1968, Commissioner's Order No. 68–290, revoked this Order to the extent the same is inconsistent with Org. Ord. No. 8.

PART I

Purpose.—The Correctional Advisory Committee is established to provide for advisory participation by citizens, lay and professional, in the District Government's correctional program and to act in an advisory capacity to the Director of Corrections, and the designated Commissioner to whom he reports, on matters affecting the public.

PART II

Functions.—It is the intent of the Board of Commissioners that the Correctional Advisory Committee shall, in general, advise the Director of Corrections and the designated Commissioner, and inform the Citizens Council in the following respects:

1. Study and make appropriate recommendations with respect to proposals for new policies, regulations, rules and statutes or changes in existing policies, regulations, rules or statutes, affecting the correctional system.

2. Advise on the needs and desires of the correctional system and the formulation and execution of programs necessary to satisfy those needs and desires.

3. Advise and assist in coordinating the programs and activities of the Department of Corrections with those of community groups, associations, and professional organizations.

4. Interpret the activities of the Department of Corrections to the public and stimulate public interest, understanding and participation of the community in solving correctional problems.

5. Study the need for correctional institutions and community facilities and make recommendations with respect thereto based upon a continuing evaluation of such institutions and facilities.

6. Evaluate proposals for the operation, construction and utilization of correctional institutions and community facilities and make recommendations to include but not be limited to location, type, and size of the institutions and facilities.

7. Study and evaluate the budget, programs, operations and activities of the Department and make appropriate recommendations with respect to changes which may appear desirable.

PART III

Composition and membership.—The Committee shall consist of not less than seven (7) members appointed by the Board of Commissioners on the basis of personal qualifications. Persons appointed to membership on the Committee shall be selected insofar as possible in such a way as to provide in the aggregate a maximum degree of perspective upon, and insight into, the correctional needs and goals of the District of Columbia.

Members shall hold no full or part-time office for which compensation is paid from District funds or from Federal grants to the District of Columbia.

The Committee shall consist of individuals of outstanding ability and knowledge in the fields of law, engineering, business, behavioral science, labor or civic affairs. A member may be a rehabilitated offender if he meets the other criteria established herein.

PART IV

Term of office.—The term of office of members shall be fixed at three years except for initial appointments as follows: of the members first appointed as members of said Committee, three shall be appointed for one year, two for two years, and two for three years. Should a vacancy occur through the death, incapacity, resignation, or removal of a member, a successor shall be appointed to complete the unexpired term of that member. After the expiration of his term each member shall continue to serve until his successor is appointed and qualified. No person who has served six years or more consecutively as a member shall be reappointed as a member until after the expiration of one year from the end of such service.

PART V

Oath of office.—Members shall take an oath of office as follows:

"I, _____, having been duly appointed by the Board of Commissioners as a member of the Correctional Advisory Committee, do solemnly swear that I will support and defend the Constitution of the United States; that I will perform such duties as may be assigned to me as a member of said Committee to the best of my ability without fear or favor; that I will exercise my best judgment and will consider each matter before me from the viewpoint of the best interest of the District of Columbia as a whole; and that I will well and faithfully discharge said duties so help me God."

PART VI

Compensation.—Members shall serve without compensation, but appropriate expenses will be reimbursed as indicated below.

PART VII

Organization.—The Correctional Advisory Committee shall determine its own organization establishing appropriate committees and subcommittees, and shall perfect its own rules of procedure. The Committee shall elect its own officers annually from among its own members. It shall convene at least nine times each year at regularly scheduled meetings. It shall hold additional meetings at the call of the Director of Corrections or a majority of the Committee membership. The Director of Corrections shall be notified of all such meetings sufficiently in advance and shall have the option of attending or sending his designated agent as an observer.

PART VIII

Administration.—The Director of Corrections shall assist the Council in matters of administration of the Committee and shall provide it with necessary staff services as needed. Expenses incurred by the Committee as a whole or by individual members, when authorized by the Board of Commissioners, will become an obligation against funds so designated.

PART IX

Reports.—Reports and recommendations of the Committee shall be furnished to the Director of Corrections or to the Citizens Council, or both, and may be released at such time and under such circumstances as the Director of Corrections or the Correctional Advisory Committee may determine.

PART X

Effective date.—The provisions of this Order shall become effective on and after February 7, 1967.

TITLE 2.—DISTRICT BOARDS AND COMMISSIONS

Chap. Sec.

2B. Anatomical Gifts 2–271

4. Nurses, Physical Therapists, and Psychologists 2–401

22. Public Defender Service 2–2201

Chapter 1.—HEALING ARTS PRACTICE

SUBCHAPTER I.—LICENSURE AND OTHER REGULATORY PROVISIONS

Sec.

2–133. Exemptions from operation of license laws—Officers of Federal Government—Consultants—Treatment of specified patients—Doctors employed by District.

SUBCHAPTER II.—REPORTING OF CERTAIN PHYSICAL ABUSES OF CHILDREN

2–165. Evidence not privileged if Family Division of Superior Court so determines.

SUBCHAPTER I.—LICENSURE AND OTHER REGULATORY PROVISIONS

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 27–125.

§§ 2–101, 2–102.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 2–261, 33–708.

§ 2–103. Commission on licensure—Creation—Seal.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(34) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section insofar as they relate to making and altering rules and altering and adopting a common seal, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–103a. Standards of education and training—Register of approved schools and hospitals—License on years of practice—Graduate of foreign medical schools.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(35) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) relating to establishing minimum standards to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–104. Commission on licensure to receive and record applications for licenses—Issuance of licenses—Registration and payment of fees—Penalties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–105. Power to appoint and discharge examiners and other employees—Contract for quarters and supplies.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§§ 2–106 to 2–122.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 33–708.

§ 2–123. Suspension and revocation of license—Procedure.

Suspension or revocation by the Commission of any license issued or registration effected under this subchapter, with respect to a person guilty of misconduct or professionally incapacitated, shall be governed by the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1–1501 to 1–1510). (Feb. 27, 1929, 45 Stat. 1337, ch. 352, § 27; June 25. 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, § 164(a)(2), title I, 84 Stat. 584.)

AMENDMENT

1970—Section 164(a)(2) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§§ 2–124 to 2–128.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 33–708.

§ 2–129. License may be refused for cause—Procedure—Attendance of witnesses before Commission—Review and appeal.

The Commission may refuse to license or to register any person for any cause that in the judgment of the Commission would authorize suspension or revocation of a license or registration under section

2–123. Before the Commission refuses to license or register any applicant for cause under this section, it shall give him an opportunity to be heard in person or by attorney and to produce witnesses in his behalf. Witnesses may be produced on behalf of the Commission and on behalf of any interested person. The attendance and testimony of witnesses may be compelled by subpena issued by the Superior Court of the District of Columbia, and that court is authorized to issue and enforce the subpenas on petition of the Commission. Any person failing or refusing, without just cause, to appear and testify in response to a subpena, or in any way obstructing the course on any hearing to which he has been subpenaed, is guilty of contempt of court and may be punished as other persons guilty of contempt of court are punished. Any member of the Commission may administer oaths at any hearing. Review of the Commission's action may be had in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510). (Feb. 27, 1929, 45 Stat. 1338, ch. 352, § 38; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1; Dec. 23, 1963, 77 Stat. 615, Pub. L. 88–241, § 2; July 29, 1970, Pub. L. 91–358, § 164(a)(1), title I, 84 Stat. 584.)

AMENDMENT

1970—Section 164(a)(1) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTIONS REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–130. Penalties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–131. Suspension or revocation of license upon conviction of felony—Appeal as supersedeas.

If a person licensed or registered under the provisions of this subchapter be convicted in the District of Columbia of any felony, the court, without further hearing or procedure, may suspend for such time and under such conditions as it deems proper, or may revoke, the license or registration of the defendant, in addition to imposing any other penalty provided by law. An appeal by the defendant in any such case from the conviction of the offense shall act as a supersedeas to the judgment of the court suspending or revoking his license or registration. (Feb. 27, 1929, 45 Stat. 1338, ch. 352, § 40; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 157(a), 84 Stat. 574.)

AMENDMENT

1970—Section 157(a) of Act July 29, 1970, Public Law 91–358, amended section by striking out "in the United States District Court for the District of Columbia" and inserting in lieu thereof "in the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–132. Enjoining unlawful practice of healing art—Procedure.

The unlawful practice of the healing art may be enjoined by the Superior Court of the District of Columbia, sitting as a court of equity, on petition by the Commission, or by the Commissioners of the District of Columbia, or by the major and superintendent of police of this District; but no such proceeding shall be entertained in advance of the conviction of the person sought to be enjoined, of violation of the provisions of this subchapter. In any such proceeding, it shall not be necessary to show that any person is individually injured by the act or acts complained of. No injunction, either temporary or permanent, shall be granted until after final trial and final judgment on the merits of the case, nor until after a hearing is had on the petition. If, on the trial, it is shown that the respondent has been unlawfully practicing the healing art, the court shall perpetually enjoin him from so practicing or continuing to practice, unless and until he has been duly licensed so to do. Procedure in such cases shall be the same as in any other injunction suit, as nearly as may be. The remedy by injunction given hereby is in addition to criminal prosecution and punishment based thereon, and not in lieu thereof. Such cases shall be advanced for trial on the docket of the trial court, and shall be advanced and tried in the appellate court, in the same manner and under the same law and regulations as apply to other suits for injunction. (Feb. 27, 1929, 45 Stat. 1338, ch. 352, § 41; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(4), 84 Stat. 570.)

AMENDMENT

1970—Section 155(c)(4) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–133. Exemptions from operation of license laws—Officers of Federal Government—Consultants—Treatment of specified patients—Doctors employed by District.

The provisions of this subchapter forbidding the practice of the healing art without a license shall not apply (a) to commissioned surgeons of the United States Army, Navy, Air Force, or Public Health Service, or to medical officers in any other branch of the federal government whatsoever, in the discharge of their official duties; nor (b) to practitioners of the healing art duly licensed to practice their respective callings in states or territories, or in jurisdictions under the control of the federal government, or in foreign countries, and actually called from such states, territories, jurisdictions, or countries, in consultation, to visit specifid patients in the District of Columbia or to give demonstrations or clinics under the auspices and for the members of an

incorporated organization made up of licensed practitioners of the healing art in the District of Columbia; nor (c) to practitioners licensed to practice their respective callings in states and territories, and in other jurisdictions forming a part of the United States, or in foreign countries, and called from such states, territories, jurisdictions, or countries to visit, on their own behalf and not in consultation, specified patients in the District of Columbia; nor (d) to any practitioner in the discharge of his official duties as an employee of the government of the District of Columbia if such practitioner—

(1) is not less than twenty-one years of age and is of good moral character,

(2) has studied the healing art through not less than four graded courses and not less than nine months each in a professional school or schools approved by the Commissioners,

(3) has had not less than one year of training in a hospital approved by the Commissioners, and

(4) is duly licensed to practice his calling in a State or other jurisdiction forming a part of the United States. All practitioners claiming exemption under the provisions of this section, except those called into the District of Columbia on consultations only, shall file with the Commission, in such manner as the commission may prescribe, evidence of their right to such exemption. Upon proof of that right, to the satisfaction of the commission, the commission shall enter the name of the applicant in a register kept for that purpose and shall issue to the applicant a certificate in evidence of such registration. (Feb. 27, 1929, 45 Stat. 1339, ch. 352, § 42; Oct. 24, 1967, Pub. L. 90–115, § 1, 81 Stat. 336.)

CODIFICATION

In clause (a), "Air Force" was inserted on authority of section 207(a)(f) of act July 26, 1947, ch. 343, 61 Stat. 502.

AMENDMENTS

1967—Section 1, Pub. L. 90–115, amended section by striking out ": Provided, That all" and inserting in lieu thereof the matter beginning with "; nor (d)" and ending with the word "All".

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS TO SINGLE COMMISSIONER

Section 3 of Pub. L. 90–115, provided:

"Effective on the effective date of this Act [Oct. 24, 1967, amendments of sections 2–133, 2–308, 2–309 and the addition of section 2–309a] or on the effective date of part IV of Reorganization Plan Numbered 3 of 1967, whichever is later, the functions vested in the Commissioners by this Act [Oct. 24, 1967, amendments of sections 2–133, 2–308, 2–309 and the addition of section 2–309a] shall be deemed to be vested in the Commissioner appointed pursuant to part III of such plan."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§§ 2–134 to 2–136.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 33–708.

§ 2–137. Enforcement.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§§ 2–138 to 2–140.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 33–708.

§ 2–141. Delegation of functions of "Commission"—Definition.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SUBCHAPTER II.—REPORTING OF CERTAIN PHYSICAL ABUSES OF CHILDREN

§ 2–165. Evidence not privileged if Family Division of Superior Court so determines.

Notwithstanding the provisions of sections 14–306 and 14–307, neither the physician-patient privilege nor the husband-wife privilege shall be a ground for excluding evidence in any proceeding in the Family Division of the Superior Court of the District of Columbia concerning the welfare of such child, provided that the Family Division of the Superior Court determines such privilege should be waived in the interest of public justice. (Nov. 6, 1966, 80 Stat. 1355, Pub. L. 89–775, § 5; July 29, 1970, Pub. L. 91–358, title I, § 159(a), 84 Stat. 577.)

AMENDMENT

1970—Section 159(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "Juvenile Court" both times it appears and inserting in lieu thereof "Family Division of the Superior Court."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 2.—ANATOMICAL BOARD

§ 2–204. Bond to be furnished by school receiving bodies.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–209. Prosecutions.

All prosecutions under this chapter shall be in the Superior Court of the District of Columbia, on information brought in the name of said District on its behalf. (Apr. 29, 1902, 32 Stat. 175, ch. 638, § 9; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88–60, § 6; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 2A.—HUMAN TISSUE BANKS

Sec.

2–251. Statement of policy and purpose.
2–252. Definitions.
2–253. Tissue bank licenses and regulations.
2–254. Penalties.
2–255. Repealed.
2–256. Repealed.
2–257. Repealed.
2–258. Office of the Chief Medical Examiner.
2–259. Exemption of licensed undertakers from act.
2–260. Coordination of act with reorganization plan No. 5.
2–261. Blood banks—Authority to transfer blood components within District of Columbia.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 27–119a, 27–125.

§ 2–252. Definitions.

For the purposes of this chapter and sections 27–119a and 27–125, except where the context indicates a different meaning—

"Commissioners" means the Commissioners of the District of Columbia or their designated agent.

"Donor" means any person who, in accordance with the provisions of chapter 2B of this title, bequeaths or donates his tissue for removal after death in furtherance of the purposes of such chapter, and also means any deceased person whose tissue is donated or disposed of for the purposes of this chapter, chapter 2B of this title, and sections 27–119a and 27–125.

"Tissue" means any body of a dead human or any portion thereof, including organs, tissues, eyes, bones, arteries, blood, and other fluids.

"Tissue bank" means a facility for procuring, removing, and disposing of tissue for the purposes set forth in chapter 2B of this title, and for the purposes of reconstructive medicine and surgery, and research and teaching in reconstructive medicine and surgery. (Sept. 10, 1962, 76 Stat. 534, Pub. L. 87–656, § 3; May 26, 1970, Pub. L. 91–268, § 9(a), 84 Stat. 270.)

AMENDMENT

1970—Section 9(a) of Act May 26, 1970, Pub. L. 91–268, amended definitions of "Donor," "Tissue," and "Tissue bank" to read as above set out.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–253. Tissue bank licenses and regulations.

* * * * *

(b) The Commissioners are authorized, after public hearing, to adopt and promulgate rules and regulations to carry out the purposes of this chapter and chapter 2B of this title, including, without limitation, rules and regulations prescribing (1) the terms and conditions under which a tissue bank license may be issued and renewed; (2) the fees to be paid for the issuance and renewal of such licenses; (3) the duration of such licenses; (4) the grounds for suspension and revocation of such licenses; (5) the operation of tissue banks; (6) the conditions under which tissue may be processed, preserved, stored, and transported; and (7) the making, keeping, and disposition of records by tissue banks or by other persons processing, preserving, storing, or transporting tissue.

* * * * *

(d) Any person aggrieved by any final decision or final order of the Commissioners denying, suspending, or revoking any tissue bank license or renewal thereof, issued or applied for under this chapter and sections 27–119a and 27–125, may obtain a review of such decision or order in the District of Columbia Court of Appeals.

* * * * *

(As amended May 26, 1970, Pub. L. 91–268, § 9(b), 84 Stat. 270; July 29, 1970, Pub. L. 91–358, § 164(f), title I, 84 Stat. 585.)

AMENDMENTS

1970—Section 9(b) of Act May 26, 1970, Pub. L. 91–268, amended subsection (b) to authorize rules and regulations to carry out chapter 2B of this title.

Section 164(f) of Act July 29, 1970, Public Law 91–358 amended subsection (d) by striking out ", and may seek review by the United States Court of Appeals for the District of Columbia" and all that follows and inserting in lieu thereof a period. For stricken provisions see 1967 edition of the code.

EFFECTIVE DATE OF 1970 AMENDMENTS BY PUB. L. 91–358

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(36) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (b) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 27–125.

§ 2–255. Repealed. May 26, 1970, Pub. L. 91–268, § 9(c), 84 Stat. 270.

Section, act Sept. 10, 1962, Pub. L. 87–656, § 6, 76 Stat. 535, provided for donation of tissue, and is now covered by sections 2–272 through 2–275.

§ 2–256. Repealed. May 26, 1970, Pub. L. 91–268, § 9(c), 84 Stat. 270.

Section, act Sept. 10, 1962, Pub. L. 87–656, § 7, 76 Stat. 536, provided for tissue donations by those having right to body, and is now covered by section 2–273.

§ 2–257. Repealed. May 26, 1970, Pub. L. 91–268, § 9(c), 84 Stat. 270.

Section, Act Sept. 10, 1962, Pub. L. 87–656, § 8, 76 Stat. 536, related to persons entitled to the body, and is now covered by sections 2–272 and 2–274.

§ 2–258. Office of the Chief Medical Examiner.

(a) The Commissioner is authorized to appoint physicians to perform the functions of the Chief Medical Examiner, in accordance with chapter 23 of title 11.

(b) The Chief Medical Examiner of the District of Columbia may, in his discretion, allow tissue to be removed from any dead human body in his custody or under his jurisdiction. Such tissue removal shall not interfere with other functions of his Office. The person who, in accordance with section 2–272(b), is authorized to donate tissues from the body, shall first authorize the tissue removal. (Sept. 10, 1962, 76 Stat. 536, Pub. L. 87–656, § 9; May 26, 1970, Pub. L. 91–268, § 9(d), 84 Stat. 270; July 29, 1970, Pub. L. 91–358, § 160(b), title I, 84 Stat. 579.)

AMENDMENTS

1970—Section 9(d) of Act May 26, 1970, Pub. L. 91–268, amended subsection (b) to substitute reference to "section 2–272(b)" for "section 2–257".

Section 160(b) of Act July 29, 1970, Public Law 91–358, amended section generally to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENTS BY PUB. L. 91–358

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–2312.

§ 2–260. Coordination of act with reorganization plan No. 5.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–261. Blood banks—Authority to transfer blood components within District of Columbia.

(a) Any blood bank in the District of Columbia, holding an unsuspended and unrevoked license issued under section 351 of the Public Health Service Act (42 U.S.C. 262), may transfer, for use in the District of Columbia, platelets and other components of blood in general use in the States (as determined by the Commissioner of the District of Columbia), produced in such blood bank, to physicians licensed under the Healing Arts Practice Act, District of Columbia, 1928 (section 2–101 et seq.), to District of Columbia hospitals, and to licensed private hospitals and other medical facilities in the District of Columbia.

(b) Section 351 of the Public Health Service Act (42 U.S.C. 262) shall not apply with respect to any transfer made in accordance with subsection (a) of this section. (May 18, 1970, Pub. L. 91–256, 84 Stat. 218.)

CODIFICATION

Section was not enacted as part of the Act of Sept. 10, 1962, which comprises this chapter and the amendments to sections 27–119a and 27–125.

In the first subsection, the designation "(a)" is supplied to reflect the designation of subsection (b). For this reason, the words "subsection (a) of this section" are substituted in subsection (b) for "the first section of this Act".

Chapter 2B.—ANATOMICAL GIFTS

Sec.
2–271. Definitions—Short title.
2–272. Persons who may execute an anatomical gift.
2–273. Persons who may become donees—Purposes for which anatomical gifts may be made.
2–274. Manner of executing anatomical gifts.
2–275. Delivery of documents of gift.
2–276. Amendment or revocation of the gift.
2–277. Rights and duties at death.
2–278. Uniformity of interpretation.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2–252, 2–253, 27–119a, 27–125.

§ 2–271. Definitions—Short title.

(a) As used in this chapter, the term—

(1) "bank or storage facility" means a facility licensed, accredited, or approved under the laws of any State for storage of human bodies or parts thereof;

(2) "decedent" means a deceased individual and includes a stillborn infant or fetus;

(3) "donor" means an individual who makes a gift of all or part of his body;

(4) "hospital" means a hospital licensed, accredited, or approved under the laws of any State and includes a hospital operated by the United States Government, a State, or a subdivision thereof, although not required to be licensed under State laws;

(5) "part" includes organs, tissues, eyes, bones, arteries, blood, other fluids, and other portions of a human body, and "part" includes "parts";

(6) "person" means an individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership, or association or any other legal entity;

(7) "physician" or "surgeon" means a physician or surgeon licensed or authorized to practice under the laws of any State; and

(8) "State" includes any State, district, Commonwealth, territory, insular possession, the District of Columbia, and any other area subject to the legislative authority of the United States of America.

(b) This chapter shall be known as the "District of Columbia Anatomical Gift Act". (May 26, 1970, Pub. L. 91–268, § 1, 84 Stat. 266.)

§ 2–272. Persons who may execute an anatomical gift.

(a) Any individual of sound mind and eighteen years of age or more may give all or any part of his body for any purposes specified in section 2–273, the gift to take effect upon death.

(b) Any of the following persons, in order of priority stated, when persons in prior classes are not available at the time of death, and in the absence of actual notice of contrary indications by the decedent, or actual notice of opposition by a member of the same or a prior class, may give all or any part of the decedent's body for any purposes specified in section 2–273:

(1) the spouse,

(2) an adult son or daughter,

(3) either parent,

(4) an adult brother or sister,

(5) a guardian of the person of the decedent at the time of his death, or

(6) any other person authorized or under obligation to dispose of the body.

(c) If the donee has actual notice of contrary indications by the decendent, or that a gift by a member of a class is opposed by a member of the same or a prior class, the donee shall not accept the gift. The persons authorized by subsection (b) may make the gift after death or immediately before death.

(d) A gift of all or part of a body authorizes any examination necessary to assure medical acceptability of the gift for the purposes intended.

(e) The rights of the donee created by the gift are paramount to the rights of others except as provided by section 2–277(d). (May 26, 1970, Pub. L. 91–268, § 2, 84 Stat. 266.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–258, 2–274.

§ 2–273. Persons who may become donees—Purposes for which anatomical gifts may be made.

The following persons may become donees of gifts of bodies or parts thereof for the purposes stated:

(1) any hospital, surgeon, or physician, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(2) any accredited medical or dental school, college, or university, for education, research, advancement of medical or dental science, or therapy; or

(3) any bank or storage facility, for medical or dental education, research, advancement of medical or dental science, therapy, or transplantation; or

(4) any specified individual for therapy or transplantation needed by him.

(May 26, 1970, Pub. L. 91–268, § 3, 84 Stat. 267.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2–272.

§ 2–274. Manner of executing anatomical gifts.

(a) A gift of all or part of the body under section 2–272(a) may be made by will. The gift becomes effective upon the death of the testator without waiting for probate. If the will is not probated, or if it is declared invalid for testamentary purposes, the gift, to the extent that it has been acted upon in good faith, is nevertheless valid and effective.

(b)(1) A gift of all or part of the body under section 2–272(a) may also be made by document other than a will. The gift becomes effective upon death of the donor. The document, which may be a card designed to be carried on the person, must be signed by the donor, in the presence of two witnesses who must sign the document in his presence. If the donor cannot sign, the document may be signed for him at his direction and in his presence, and in the presence of two witnesses who must sign the document in his presence. Delivery of the document of gift during the donor's lifetime is not necessary to make the gift valid.

(2) Any such document referred to in paragraph (1) of this subsection may be in the following form and contain the following information:

UNIFORM DONOR CARD

of

print or type name of donor

In the hope that I may help others, I hereby make this anatomical gift, if medically acceptable, to take effect upon my death. The words and marks below indicate my desires.

I give: (a)—any needed organs or parts
(b)—only the following organs or parts

specify the organ(s) or part(s)

for the purposes of transplantation, therapy, medical research, or education;
(c)—my body for anatomical study if needed.

Limitations or special wishes, if any: _____

(Other side of card)

Signed by the donor and the following two witnesses in the presence of each other:

Signature of donor	Date of birth of donor
Date signed	City and State
Witness	Witness

This is a legal document under the District of Columbia Anatomical Gift Act or similar laws.

(c) The gift may be made to a specified donee or without specifying a donee. If the latter, the gift may be accepted by the attending physician as donee upon or following death. If the gift is made to a specified donee who is not available at the time and place of death, the attending physician upon or following death, in the absence of any expressed indication that the donor desired otherwise, may accept the gift as donee. The physician who becomes a donee under this subsection shall not participate in the procedures for removing or transplanting a part.

(d) Notwithstanding section 2–277(b), the donor may designate in his will, card, or other document of gift the surgeon or physician to carry out the appropriate procedures. In the absence of a designation, or if the designee is not available, the donee or other person authorized to accept the gift may employ or authorize any surgeon or physician for the purpose.

(e) Any gift by a person designated in section 2–272(b) shall be made by a document signed by him, or made by his telegraphic, recorded telephonic, or other recorded message. (May 26, 1970, Pub. L. 91–268, § 4, 84 Stat. 267.)

§ 2–275. Delivery of documents of gift.

If the gift is made by the donor to a specified donee, the will, card, or other document, or any executed copy thereof, may be delivered to the donee to expedite the appropriate procedures immediately after death, but delivery is not necessary to the validity of the gift. The will, card, or other document, or an executed copy thereof, may be deposited in any hospital, bank or storage facility, or registry office that accepts them for safekeeping or for facilitation of procedures after death. On request of any interested party upon or after the donor's death, the person in possession shall produce the document for examination. (May 26, 1970, Pub. L. 91–268, § 5, 84 Stat. 269.)

§ 2–276. Amendment or revocation of the gift.

(a) If the will, card, or other document of executed copy thereof, has been delivered to a specified donee, the donor may amend or revoke the gift by—

(1) the execution and delivery to the donee of a signed statement, or

(2) an oral statement made in the presence of two persons and communicated to the donee, or

(3) a statement during a terminal illness or injury addressed to an attending physician and communicated to the donee, or

(4) a signed card or document found on his person or in his effects.

(b) Any document of gift which has not been delivered to the donee may be revoked by the donor in the manner set out in subsection (a) or by destruction, cancellation, or mutilation of the document and all executed copies thereof.

(c) Any gift made by a will may also be amended or revoked in the manner provided for amendment or revocation of wills, or as provided in subsection (a). (May 26, 1970, Pub. L. 91–268, § 6, 84 Stat. 269.)

§ 2–277. Rights and duties at death.

(a) The donee may accept or reject the gift. If the donee accepts a gift of the entire body, he may,

subject to the terms of the gift, authorize embalming and the use of the body in funeral services. If the gift is of a part of the body, the donee, upon the death of the donor and prior to embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the surviving spouse, next of kin or other persons under obligation to dispose of the body.

(b) The time of death shall be determined by a physician who attends the donor at his death, or, if none, the physician who certifies the death. This physician shall not participate in the procedures for removing or transplanting a part.

(c) A person, who acts in good faith, in accord with the terms of this chapter, or under the anatomical gift laws of another State is not liable for damages in any civil action or subject to prosecution in any criminal proceeding for his act.

(d) The provisions of this chapter are subject to the laws of the District of Columbia prescribing powers and duties with respect to autopsies. (May 26, 1970, Pub. L. 91–268, § 7, 84 Stat. 269.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–272, 2–274.

§ 2–278. Uniformity of interpretation.

This chapter shall be so construed as to effectuate its general purpose to make uniform the law of those States which enacted it. (May 26, 1970, Pub. L. 91–268, § 8, 84 Stat. 270.)

Chapter 3.—DENTISTS

Sec.
2–309a. Special licenses—Applicability of other sections.
2–311. Revocation or suspension of license—Grounds.
2–312. Procedure in revoking or suspending license.

§ 2–301. Board of Dental Examiners—Appointment—Qualifications—Eligibility—Term of office.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–302. Officers—Bond—Rules and regulations for admission to and practice of dentistry—Dental internes for hospitals—Sessions of board.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(37) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to making and adopting of rules and regulations to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–303. Official seal—Record of proceedings—Register of licenses issued or revoked—Certified copy of record as evidence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–304. Procedure—Attendance of witnesses—Production of books and papers.

The said Board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The president and secretary-treasurer of the Board shall have power to issue subpenas and each shall have authority to administer oaths. Upon the failure of any person to attend as a witness, when duly subpenaed, or to produce documents when duly directed by said board, the Board shall have power to refer the said matter to any judge of the Superior Court of the District of Columbia, who may order the attendance of such witness, or the production of such documents, or require the said witness to testify, as the case may be, and upon the failure of the witness to attend, to testify, or to produce such documents, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpena issued or to testify in a case pending before said court. Witnesses who have been subpenaed by the Board, and who testify if called upon, shall be paid the same fees that are paid witnesses in the Superior Court of the District of Columbia. (July 2, 1940, 54 Stat. 716, ch. 513, § 4; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(5), 84 Stat. 570.)

AMENDMENT

1970—Section 155(c)(5) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–305. Duty of secretary-treasurer to enforce law—Jurisdiction of court—Services of corporation counsel—Investigation by police, board, or its assistants.

(1) It shall be the duty of the secretary-treasurer of the Board to enforce the provisions of all laws relating to the practice of dentistry in the District of Columbia, and all violations of said laws shall be prosecuted in the Superior Court of the District of Columbia by the Corporation Counsel or one of his assistants; and the Corporation Counsel and his assistants shall render such other legal services as may from time to time be required by the Board of Dental Examiners.

(2) The major and superintendent of the Metropolitan Police Department shall detail such members of his force as may be necessary to assist the Board in the investigations and prosecutions incident to the enforcement of this chapter. The Board is authorized to employ such other persons as it deems necessary to assist in the investigation and prosecutions incident to the enforcement of this chapter. (July 2, 1940, 54 Stat. 717, ch. 513, § 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–306. Annual report of finances and official acts.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–307. Application for license, form and requirements—Photograph—Citizenship—Verification—Fees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–308. Application for license—Examination—Admission without examination—Reciprocity with States or Territories—Waiver of examination.

AMENDMENTS

1967—Section 2(1) of Act Oct. 24, 1967, Pub. L. 90–115, amended section 8 of the Act entitled "An Act for the regulation of the practice of dentistry in the District of Columbia, and for the protection of the people from empiricism in relation thereto", approved June 6, 1892, by inserting "(a)" immediately after "Sec. 8." Sec. 8 of the Act of June 8, 1892, is this section as amended by subsequent acts and the text of said section minus the designation of subsection (a) is set out in the 1967 edition of this code.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS TO SINGLE COMMISSIONER

Section 3 of Pub. L. 90–115 provided:

"Effective on the effective date of this Act [Oct. 24, 1967, amendments of sections 2–133, 2–308, 2–309 and the addition of section 2–309a] or on the effective date of part IV of Reorganization Plan Numbered 3 of 1967, whichever is later, the functions vested in the Commissioners by this Act [Oct. 24, 1967, amendments of sections 2–133, 2–308, 2–309 and the addition of section 2–309a] shall be deemed to be vested in the Commissioner appointed pursuant to part III of such plan."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–309. License—Form and execution—Registration—Duplicate licenses.

AMENDMENTS

1967—Section 2(2) of Act Oct. 24, 1967, Pub. L. 90–115, amended section 9 of the Act entitled "An Act for the regulation of the practice of dentistry in the District of Columbia, and for the protection of the people from empiricism in relation thereto", approved June 6, 1892, by striking out in section 9, "Sec. 9." and inserting in front of the text thereof "b", thus making the text thereof subsection (b) of section 8. The text of what was formerly designated as section 9 is set out in the 1967 edition of the code, minus the designation of subsection (b).

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS TO SINGLE COMMISSIONER

See § 3 of Pub. L. 90–115, set out as a note to sec. 2–308.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–309a. Special licenses—Applicability of other sections.

(a)(1) The Commissioners may issue to qualified applicants a special license to practice dentistry in the District of Columbia under such limitations as the Commissioners shall set forth in the license.

(2) For purposes of paragraph (1) of this subsection, the term "qualified applicant" means a person—

(A) who holds a license to practice dentistry in a State or other jurisdiction forming a part of the United States which license has been lawfully issued;

(B) who has not had any license to practice dentistry revoked or suspended in any jurisdiction;

(C) who is a graduate of a reputable dental college, approved by the Commissioners; and

(D) who has successfully completed any practical or theoretical examination which the Commissioners may require.

(b) The provisions of the following sections of this chapter shall apply with respect to a license issued under this section: section 2–311 (relating to revocation or suspension of license), section 2–312 (relating to procedure in suspending or revoking license), section 2–313 (relating to fees), and section 2–314 (annual registration of dentists)." (June 6, 1892, 27 Stat. 43, ch. 89 § 9, as added Oct. 24, 1967, Pub. L. 90–115, § 2(3), 81 Stat. 336.)

AMENDMENT

1967—Section 2(3) of Pub. L. 90–115, added this section.

EFFECTIVE DATE OF TRANSFER OF FUNCTIONS TO SINGLE COMMISSIONER

See § 3 of Pub. L. 90–115, set out as a note to sec. 2–308.

§ 2–310. Practice of dentistry declared to be subject to regulation and control as affecting public health and safety.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–311. Revocation or suspension of license—Grounds.

The Board may revoke or suspend the license of any dentist in the District of Columbia upon proof satisfactory to the Board—

(a) That said license or registration was procured through fraud or misrepresentation.

(b) That the holder thereof has been convicted of an offense involving moral turpitude.

(c) That the holder thereof is guilty of chronic or persistent inebriety, or addiction to habit-forming drugs.

(d) That the holder thereof is guilty of advertising professional superiority or the performance of professional services in a superior manner; advertising prices for professional service; advertising by means of large display, glaring light signs, or containing as a part thereof the representation of a tooth, teeth, bridgework, or any portion of the human head; employing or making use of solicitors or free publicity press agents directly or indirectly; or advertising any free dental work, or free examination; or advertising to guarantee any dental service or to perform any dental operation painlessly.

(e) That such holder is guilty of conduct which disqualifies him to practice with safety to the public.

(f) That such holder is guilty of hiring, supervising, permitting, or aiding unlicensed persons to practice denistry.

(g) That such holder, being a manager, proprietor, operator, or conductor of a place where dental operations are performed, employs a person who is not a licensed dentist to practice dentistry as defined in this chapter, or permits such persons to practice dentistry in his office.

(h) That such holder is guilty of unprofessional conduct.

The following acts on the part of a licensed dentist are hereby declared to constitute unprofessional conduct:

(1) Practicing while his license is suspended.

(2) Wilfully deceiving or attempting to deceive the Board or their agents with reference to any matter under investigation by the board.

(3) Advertising by any medium than the carrying or publishing of a modest professional card or the display of a modest window or streeet sign at the licensee's office, which professional card or window or street sign shall display only the name, address, profession, office hours, telephone connections, and, if his practice is so limited, his specialty: *Provided,* That in case of announcement of change of address or the starting of practice, the usual size card of announcement may be used. The size of said cards or signs shall be designated by the Board.

(4) Practicing dentistry under a false or assumed name or corporate name other than a partnership name containing the names of the partners, or any name except his full proper name which shall be the name used in his license granted by the Board.

(5) Violating this chapter or aiding any person to violate this chapter or violating or aiding any person to knowingly violate the dental practice act of any state or territory.

(6) Practicing in the employment of, or in association with, any person who is practicing in an unlawful or unprofessional manner.

The foregoing specifications of acts constituting unprofessional conduct shall not be construed as a complete definition of unprofessional conduct nor as authorizing or permitting the performance of other or similar acts not denounced, or as limiting or restricting the Board from holding that other or similar acts also constitute unprofessional conduct. (July 2, 1940, 54 Stat. 718, ch. 513, § 11; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, § 164(b)(1), title I, 84 Stat. 584.)

AMENDMENT

1970—Section 164(b)(1) of Act July 29, 1970, Public Law 91–358 amended section (A) by striking out all that precedes paragraph (a) and inserting in lieu thereof "The Board may revoke or suspend the license of any dentist in the District of Columbia upon proof satisfactory to the Board—", and (B) by striking out "the said court" in the last sentence and inserting in lieu thereof "the Board". For stricken provisions see 1967 Edition of Code.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–309a, 33–708.

§ 2–312. Procedure in revoking or suspending license.

Suspension or revocation by the Board of any license issued or registration effected under this chapter, with respect to a person guilty of misconduct or professionally incapacitated, shall be governed by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510). (July 2, 1940, 54 Stat. 719, ch. 513, § 12; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, § 164(b)(3), title I, 84 Stat. 584.)

AMENDMENT

1970—Section 164(b)(3) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–309a, 33–708.

§§ 2–313, 2–314.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 2–309a, 2–325, 33–708.

§§ 2–315 to 2–324.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 33–708.

§ 2–325. Employment of more than two dental hygienists—Permission of board—Services permitted to be performed—Revocation of licenses.

* * * * *

The license of a dentist who permits a dental hygienist, operating under his supervision, to perform any operation other than that permitted under this section, may be suspended or revoked, and the license of the hygienist violating this chapter may also be suspended or revoked, in accordance with section 2–312. (As amended July 29, 1970, Pub. L. 91–358, § 164(b)(2), title I, 84 Stat. 584.)

AMENDMENT

1970—Section 164(b)(2) of Act July 29, 1970, Public Law 91–358, amended the last sentence of this section to read as above set out. For provisions of this last sentence of section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§§ 2–326 to 2–331.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 33–708.

Chapter 4.—NURSES, PHYSICAL THERAPISTS, AND PSYCHOLOGISTS

SUBCHAPTER II.—PRACTICAL NURSES

Sec.
2–437. Prosecutions for violations of sections 2–424 and 2–435, to be conducted in the Superior Court by Corporation Counsel—Proof.

SUBCHAPTER IV.—PSYCHOLOGISTS

2–481. Congressional declaration.
2–482. Definitions.
2–483. Practice of licensed or certified psychologists.
2–484. Practice of psychology without license or certificate prohibited—Exemptions.

Sec.
2-485. Duties of Commissioner—Board of Psychologist Examiners—Records.
2-486. Qualification requirements—Written examination—Application fee.
2-487. License without examination.
2-488. Reciprocity.
2-489. Regulations—Fees.
2-490. Renewal of license or certificate.
2-491. Denial, revocation, and suspension of license or certificate.
2-492. Procedure for suspension or revocation of license or certificate—Hearing—Review of decision.
2-493. Penalties.
2-494. Enjoining unauthorized practice of psychology.
2-495. Commissioner to enforce subchapter.
2-496. Competency of psychologists to testify.
2-497. Appropriations authorized.
2-498. Separability of provisions.

SUBCHAPTER I.—REGISTERED NURSES

§ 2-401. Registration required.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33-708.

§ 2-402. Examining board—Constitution—Qualifications—Tenure—Removal.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33-708.

§ 2-403. Examining board—Organization—Officers—Duties—By-laws—Registration of nurses—Examinations—Notice—Inspection of schools.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(38) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section insofar as adopting and amending by-laws relating to the registration of graduate nurses, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33-708.

§§ 2-404, 2-405.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 33-708.

§ 2-406. Annual registration—Nurses—Training schools—Cancellation by failure to reregister—Restoration.

Each nurse who has been registered in the District of Columbia shall be reregistered each year on the 1st day of July upon application to the executive secretary of said board and the payment of a fee of $1: *Provided,* That such fee of $1 shall not be payable in case the applicant has been originally registered within the twelve months next preceding the day for reregistration. Application for reregistration may be made within sixty days preceding the day of reregistration. Registration of any nurse who does not thus apply for reregistration for any year shall be automatically canceled as of the beginning of such year. The by-laws adopted by the Nurses' Examining Board shall define the conditions upon which the registration of a nurse may be restored. Schools of nursing in the District of Columbia may apply to said Board for registration and, with the exception of schools of nursing maintained at government expense, shall pay a fee of $25 at the time application is made. Each such school registered shall apply each year for reregistration, and, with the exception of schools of nursing maintained at government expense, at the same time pay a fee of $1. On the petition of an applicant to whom registration or reregistration has been denied by the nurses' examining board, the action of the board may be reviewed by the District of Columbia Court of Appeals in the manner provided by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510). (Mar. 2, 1929, 45 Stat. 1521, ch. 540, § 7; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88-60, § 6; Dec. 23, 1963, 77 Stat. 615, Pub. L. 88-241, § 3; July 29, 1970, Pub. L. 91-358, title I, § 164(e), 84 Stat. 585.)

AMENDMENT

1970—Section 164(e) of Act July 29, 1970, Public Law 91-358 amended section by striking out "sections 11-742, 17-303, 17-304, 17-305(b), 17-306, and 17-307 of the District of Columbia Code" and inserting in lieu thereof "the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510)".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(38) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section insofar as adopting and amending by-laws relating to the registration of graduate nurses, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33-708.

§ 2-407. Suspension or revocation of certificate for filing false document or evidence—Procedure—Appeal.

No person shall file or attempt to file with the Nurses' Examining Board of the District of Columbia any statement, diploma, certificate, credential, or other evidence when she knows, or when she might by reasonable diligence ascertain, that it is false and misleading. Suspension or revocation by the Nurses' Examining Board of any license issued or registration effected under this subchapter, with respect to a person guilty of misconduct or professionally incapacitated, shall be governed by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1-1501 to 1-1510). (Feb. 9, 1907, 34 Stat. 888, ch. 913, § 6; Mar. 2, 1929, 45 Stat. 1521, ch. 540, § 8; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Nov. 8, 1965, 79 Stat. 1308, Pub. L. 89-347, § 6; July 29, 1970, Pub. L. 91-358, § 164(d), title I, 84 Stat. 585.)

AMENDMENT

1970—Section 164(d) of Act July 29, 1970, Public Law 91–358 amended section by striking out all after the first sentence and inserting a new second sentence as above set out. For stricken provisions, see 1967 Edition of the Code.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–408. Expenses to be paid from registration fees—Salaries and allowances—Audit—Annual report.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(39) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to the fixing of fees referred to in clause (c), to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§§ 2–409 to 2–411.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 33–708.

SUBCHAPTER II.—PRACTICAL NURSES

§ 2–24. Use of title "Licensed Practical Nurse" and abbreviation "L.P.N.".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2–437.

§ 2–425. Commissioners authorized to delegate functions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–426. Establishment of Practical Nurses' Examining Board—Composition—Terms—Compensation

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–427. Rules and regulations—Curricula and standards for nursing schools—Examination and licensing—Renewal of licenses—Commissioners may make studies and investigations, subpena witnesses—Application to compel attendance.

* * * * *

(b) The Commissioners may make such studies and investigations, and obtain or require the furnishing of such information under oath or affirmation or otherwise, as they deem necessary or proper to assist them in prescribing any regulation or order under this subchapter, or in the administration and enforcement of this subchapter, and regulations and orders thereunder. For such purposes, the Commissioners may administer oaths and affirmations, may require by subpena or otherwise the attendance and testimony of witnesses and the production of documents at any designated place. In the event of contumacy or refusal to obey any such subpena or requirement under this section, the Commissioners may make application to the Superior Court of the District of Columbia for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it, in its discretion, may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order. (As amended July 29, 1970, Pub. L. 91–358, title, I, §§ 155(a), 164(g)(2), 84 Stat. 570, 585.)

AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsection (b) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

Section 164(g)(2) of Act July 29, 1970, Public Law 91–358 amended subsection (b) by striking out "in accordance with the provisions of subsection (c), section 5 of the Act of April 1, 1942 (56 Stat. 193, ch. 207; sec. 11–756(c), D.C. Code, 1951 edition)".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(40, 41 and 42) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (a) and (b) relating to adopting rules and regulations and prescribing minimum curricula and standards under sub-sec. (a); and obtaining information under oath or affirmation and compelling the attendance and testimony of witnesses under sub-sec. (b), to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–428. Qualification requirements—Written examination—Exception—Application fee—Closed and reopened applications.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–429. Conditions for issuance of license without written examination.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–430. License to be renewed annually—Processing of renewal applications—Reinstatement of lapsed licensees—Nonpracticing list of licensees.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–431. Applications to operate a school of practical nursing—Commissioners to pass on qualifications of applicants—Survey of approved schools for maintenance of standards—Removal procedure of schools from accredited list.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–432. Fixation of miscellaneous fees—Payment into the Treasury.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–433. Denial, revocation, or suspension of licenses—Procedure—Lists of persons denied licenses may be furnished upon written request to boards of examiners of States, Territories, or foreign countries.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–434. Review of orders and decisions of Commissioners.

Any person aggrieved by any final decision or final order of the Commissioners denying, suspending, or revoking any license, or renewal of license, issued or applied for under this subchapter may obtain a review thereof in the District of Columbia Court of Appeals. (Sept. 6, 1960, 74 Stat. 806, Pub. L. 86–708, § 15; July 8, 1963, 77 Stat. 78, Pub. L. 88–60, § 6; July 29, 1970, Pub. L. 91–358, § 164(g)(1), title I, 84 Stat. 585.)

AMENDMENT

1970—Section 164(g)(1) of Act July 29, 1970, Public Law 91–358 amended section by striking out ", and may seek a review by the United States Court of Appeals" and all that follows and inserting in lieu thereof a period. For stricken provisions see 1967 edition of the code.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–435. Selling, aiding, or abetting in the sale of fraudulent licenses or diplomas—Practicing as a licensed practical nurse under false licenses or diplomas—Use of false designation tending to imply that a person is a licensed practical nurse—Practicing under a suspended or revoked license.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2–437.

§ 2–437. Prosecutions for violations of sections 2–424 and 2–435 to be conducted in the Superior Court by Corporation Counsel—Proof.

(a) Prosecutions for violations of any provision of section 2–424 or 2–435 shall be conducted in the name of the District of Columbia in the Superior Court of the District of Columbia by the Corporation Counsel or any of his assistants.

(b) It shall be necessary to prove in any prosecution or hearing under this subchapter only a single act prohibited by law or a single holding out or an attempt without proving a general course of conduct in order to constitute a violation. (Sept. 6, 1960, 74 Stat. 807, Pub. L. 86–708, § 18; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (a) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SUBCHAPTER III.—PHYSICAL THERAPISTS

§ 2–451. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–453. Registration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2–467.

§ 2–454. Powers of Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–455. Establishment of board.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(43) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section insofar as they relate to determining the qualifications, prescribing the terms of office, and fixing the compensation of the Board, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–456. Powers and duties—Register of physical therapists and approved schools—Studies and investigations.

(a) The Commissioners are authorized to adopt from time to time and prescribe such rules and regulations as may be necessary to enable them to carry into effect the provisions of this subchapter. The Commissioners shall maintain a register of all persons registered as physical therapists. The Commissioners shall maintain a register of approved schools which they deem afford adequate training in physical therapy.

(b) The Commissioners may make such studies and investigations, and obtain or require the furnishing of such information under oath or affirmation or otherwise, as they deem necessary or proper to assist them in prescribing any regulation or order under this subchapter, or in the administration and enforcement of this subchapter, and regulations and orders thereunder. For such purposes, the Commissioners may administer oaths and affirmations, may require by subpena or otherwise the attendance and testimony of witnesses and the production of documents at any designated place. In the event of contumacy or refusal to obey any such subpena or requirement under this section, the Commissioners may make application to the Superior Court of the

District of Columbia for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order in accordance with the provisions of section 11–756(c). (Sept. 22, 1961, 75 Stat. 579, Pub. L. 87–280, § 7; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsection (b) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

REFERENCE IN TEXT

Section 11–756, referred to in subsec. (b) of this section, was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a), and subsection (c) thereof was replaced by section 11–982. Title 11 was entirely amended by section 111 of Pub. L. 91–358, and the provisions of former section 11–982 are now covered by section 11–944.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(44, 45 and 46) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (a) and (b) relating to adopting of rules and regulations under subsec. (a); and obtaining information under oath or affirmation and compelling the attendance and testimony of witnesses under subsec. (b), to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–457. Registration of qualified applicants—Issuance of certificates.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–458. Registration without examination.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Abuse of discretion

Findings of physical therapist examining board that petitioner applying for registration as physical therapist without requirement of examination did not submit satisfactory proof that he had practiced physical therapy during critical period under statute, that he had graduated from approved school, or that he had received comparable training or experience were not unreasonable or arbitrary and were supported by the evidence. *F. H. Carbon* v. *Physical Therapists Examining Board etc.* (D.C. App. 1968, 242 A. 2d 835).

Record in proceeding to review decision of physical therapist examining board denying petitioner's application for registration as physical therapist without requirement of examination failed to establish that board was prejudiced against petitioner. *Id.*

Comparable training

Training or experience offered to meet statutory requirement for registration as physical therapist in absence of graduation from approved school must establish that applicant's competence to assist his patients without endangering their health and safety is comparable to that of therapist who has graduated from approved school of physical therapy. *F. H. Carbon* v. *Physical Therapists Examining Board etc.* (D.C. App. 1968, 242 A. 2d 835).

Recognition of expertise of board

In determining whether petitioner for registration as physical therapist possesses training and experience comparable with one graduating from approved school of physical therapy, reviewing court is bound to recognize expertise of physical therapist examining board. *F. H. Carbon* v. *Physical Therapists Examining Board etc.* (D.C. App. 1968, 242 A. 2d 835).

Registration without examination

The protection of "grandfather clause" is not limited to exceptionally able people, but this does not mean that applicants shall not be required to possess the basic qualifications, competence, and skills comparable to those who have graduated from approved schools. *R. D. Culler* v. *Physical Therapists Examining Board, etc.* (D.C. App. 1967, 228 A. 2d 495).

The record established that physical therapy work previously done in district by petitioner seeking registration as physical therapist without examination had been only incidental to petitioner's employment in Maryland and did not amount to substantial physical therapy practice in the district. *Id.*

On the basis of record showing inter alia that applicant for registration as physical therapist without examination was deficient in knowledge of basic services requisite for proper understanding of physical therapy techniques during service in armed forces, displayed a lack of basic knowledge of anatomy and physiology which affected his ability to recognize contraindications for physical therapy treatments and that at Maryland nursing home applicant's duties consisted primarily in walking patients and sometimes performing nursing functions, he was not entitled to be licensed without examination. *Id.*

Applicant who had been engaged in various forms of physical therapy for 24 years and who had extensive training and experience in physical therapy was entitled to registration as a physical therapist without examination under grandfather clause of District of Columbia physical therapy statute providing for registration of those receiving comparable training or experience of an approved school graduate. *J. F. Hansen, Sr.* v. *Physical Therapists Examining Board, etc.* (D.C. App. 1967, 228 A. 2d 497).

Testimony disclosing that applicant for registration without examination as physical therapist under grandfather clause of statute had not graduated from approved school of physical therapy and had been employed exclusively in "health clubs", that 90 percent of his work was "purely massage" and that only a few treatments were performed on patients under doctors' orders did not require District of Columbia physical therapy board to grant registration, and denial of application was not arbitrary. *A. F. Olsen* v. *District of Columbia Physical Therapists Examining Board* (D.C. App. 1967, 227 A. 2d 392).

Applicant for registration without examination as physical therapist under grandfather clause of statute having been granted full hearing before physical therapist examining board and was given opportunity to present any evidence he desired, there was no unfairness in proceedings *Id.*

Uncontradicted testimony

Uncontradicted testimony of petitioner applying for registration as physical therapist without requirement of examination that he practiced physical therapy was not sufficient, and something more was required than his self-serving declarations. *F. H. Carbon* v. *Physical Therapists Examining Board etc.* (D.C. App. 1968, 242 A. 2d 835).

§ 2–459. Registration after examination.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–460. Reciprocity.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–461. Renewal of registration—Nonpracticing therapists.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(47) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) relating to the changing of the periods for which registrations as physical therapists or renewals thereof may be issued, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–462. Denial, revocation, and suspension of registration.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–463. Court review.

Any person aggrieved by any final decision or final order of the Commissioners denying, suspending, or revoking any registration, or renewal of registration, issued or applied for under this subchapter may obtain a review thereof in the District of Columbia Court of Appeals. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87–280, § 14; July 8, 1963, 77 Stat. 78, Pub. L. 88–60, § 6; July 29, 1970, Pub. L. 91–358, § 164(h), title I, 84 Stat. 585.)

AMENDMENT

1970—Section 164(h) of Act July 29, 1970, Public Law 91–358 amended section by striking out ", and may seek a review by the United States Court of Appeals for the District of Columbia" and all that follows and inserting in lieu thereof a period.

For stricken provisions see 1967 edition of the code.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–464. Unauthorized practice of physical therapy.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2–467.

§ 2–465. Practice of registered physical therapists.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2–467.

§ 2–467. Conduct of prosecutions.

(a) Prosecutions for violations of any provisions of section 2–453, 2–464, or 2–465 shall be conducted in the name of the District of Columbia in the Superior Court of the District of Columbia, by the Corporation Counsel or any of his assistants.

(b) It shall be necessary to prove in any prosecution or hearing under this subchapter only a single act prohibited by law or a single holding out or an attempt without proving a general course of conduct in order to constitute a violation. (Sept. 22, 1961, 75 Stat. 582, Pub. L. 87–280, § 18; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsection (a) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 2–468. Fees and charges—Public hearings to change fees.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–471. Reorganization.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SUBCHAPTER IV.—PSYCHOLOGISTS

§ 2–481. Congressional declaration.

The practice of psychology in the District of Columbia is hereby declared to affect the public health, safety, and welfare, and to be subject to regulation and control in the public interest to protect the public from the practice of psychology by unqualified persons and from unprofessional conduct by persons licensed to practice psychology. (Jan. 8, 1971, Pub. L. 91–657, § 2, 84 Stat. 1956.)

EFFECTIVE DATE

Section 20 of Act Jan. 8, 1971, Pub. L. 91–657, provided: "This Act [this subchapter] shall become effective ninety days after the date of its enactment."

SHORT TITLE

Section 1 of Act. Jan. 8, 1971, Pub. L. 91–657, provided: "This Act [enacting this subchapter] may be cited as the 'Practice of Psychology Act'."

§ 2–482. Definitions.

As used in this subchapter—

(A) "Commissioner" means the Commissioner of the District of Columbia.

(B) "Person" includes an association, partnership, or corporation, as well as natural persons.

(C) "Accredited college or university" means any college or university which, in the Commissioner's determination, offers either an acceptable full-time resident graduate program of study in psychology leading to the doctoral degree, or a comparable program. In making his determination concerning domestic educational institutions, the Commissioner shall accredit those institutions included in the listings of approved academic institutions published by

the United States Office of Education; in determining what foreign educational institutions shall be accredited the Commissioner may take into account the published lists of recognized accrediting agencies and professional associations.

(D) "The practice of psychology" means the rendering of or offering to render to the public for a fee, monetary or otherwise, any service involving the application of established methods and principles of the science and profession of psychology. These principles and methods are concerned with understanding, predicting, and changing behavior, and include, but are not restricted to, the use of counseling and psychotherapy with groups or individuals having adjustment problems in the areas of work, family, school, and personal relationships; measuring, testing, and assessing aptitudes, skills, public opinion attitudes, emotions, personality, and intelligence; teaching, doing research, or lecturing in psychology.

(E) "Psychotherapy" means the use of learning or other psychological behavioral modification methods in a professional relationship to assist a person or persons to modify feelings, attitudes, and behavior which are intellectually, socially, or emotionally maladjustive or ineffectual. (Jan. 8, 1971, Pub. L. 91–657, § 3, 84 Stat. 1956.)

EFFECTIVE DATE

See section 20 of Act Jan. 8, 1971, Pub. L. 91–657, set out as a note under § 2–481.

§ 2–483. Practice of licensed or certified psychologists.

All persons licensed or certified under this subchapter shall assist their clients in obtaining professional help for all relevant aspects of the clients' problem that fall outside of the boundaries of the psychologist's competence. All persons so licensed or certified shall make provision for the diagnosis and treatment of relevant medical problems by an appropriate and qualified medical practitioner, and shall, in instances where a medical problem is involved, collaborate effectively with such a medical practitioner. No person licensed or certified under this subchapter shall administer or prescribe drugs, or perform surgery or any manual or mechanical treatment whatsoever. (Jan. 8, 1971, Pub. L. 91–657, § 4, 84 Stat. 1956.)

EFFECTIVE DATE

See section 20 of Act Jan. 8, 1971, Pub. L. 91–657, set out as a note under § 2–481.

§ 2–484. Practice of psychology without license or certificate prohibited—Exemptions.

It shall be unlawful for any person to practice or to offer to practice psychology, or to represent himself to be a psychologist, unless he shall first obtain a license or certificate pursuant to this subchapter: *Provided, however,* That the following categories of persons need not obtain a license:

(A) A person bearing the title of "psychologist" in the employ of any governmental agency, academic institution, or research laboratory: *Provided,* That the services performed by such an employee, which services shall not include psychotherapy, are a part of his office or position and are provided only within the confines of the organization or are offered to like organizations.

(B) Persons providing services, exclusive of psychotherapy, to the public through governmental organizations, such as clinics, who are compensated by their employer rather than their clients. Persons coming under the exemptions established by subsections (A) and (B) may offer lecture services to the public for a fee but may not offer other psychological services to the public for a fee without having obtained a license.

(C) A student intern, or resident in psychology, pursuing a course of study or research with an accredited college, university, or training center: *Provided,* That such activities are supervised as part of his course of study, and he is designated by such title as "psychology intern," "psychology trainee," or other title clearly indicating trainee status.

(D) A person not licensed as a psychologist under the provisions of this subchapter employed by a licensed psychologist to assist in the performance of psychological and other services, other than psychotherapy, if such person works under the supervision of the licensed psychologist who assumes full responsibility for his acts, and if such person is not in any manner held out to the public as a psychologist.

(E) Qualified members of other established businesses or professions, recognized by the Commissioner, doing work of a psychological nature consistent with their training and with any code of ethics provided by their respective businesses or professions: *Provided,* That they do not hold themselves out to the public by title or description incorporating the words "psychological," "psychologist," or "psychology," unless licensed under this subchapter.

(F) A psychologist who is not licensed or certified under the provisions of this subchapter, but (1) who is licensed or certified under the laws of a State or territory of the United States or of a foreign country or province whose standards in the opinion of the Commissioner were substantially equivalent, at the date of his certification or licensure, to the requirements of this subchapter; or (2) who meets the requirements of subsections (A) and (B) of section 2–486; and who is employed or invited by a licensed psychologist who is a resident of or maintains a place of work in the District of Columbia to offer professional services in said District for a total of not more than sixty days in any calendar year without holding a license issued under the subchapter. Upon arrival in the District of Columbia, such an unlicensed psychologist shall report to the Commissioner with respect to the nature and duration of his professional activities in the District as well as the name of the person who has requested him to render services. A psychologist claiming exemption under the provisions of this section who offers professional services in the District of Columbia for more than twenty days in any calendar year shall file with the Commissioner evidence of his right to such exemption. Upon proof of that right to the satisfaction of the Commissioner, the Commissioner shall enter the name of the applicant in a register kept for that purpose and shall issue to the applicant a certificate in evidence of such registration. (Jan. 8, 1971, Pub. L. 91–657, § 5, 84 Stat. 1956.)

EFFECTIVE DATE

See section 20 of Act Jan. 8, 1971, Pub. L. 91–657, set out as a note under § 2–481.

§ 2–485. Duties of Commissioner—Board of Psychologist Examiners—Records.

(A) The Commissioner shall be responsible for reviewing the applications of persons seeking licensure or certification for the practice of psychology in the District of Columbia, for the granting and renewal of such licenses and certificates, for the preparation and administration of oral and written examinations, and for other matters related to the purposes of this subchapter.

(B) The Commissioner may appoint a Board of Psychologist Examiners. Each member of this Board shall be a citizen of the United States, licensed under the provisions of this subchapter, who shall either be a resident of the District of Columbia or have worked in the District of Columbia for at least two years preceding appointment to the Board. The initial appointees shall be psychologists eligible for licensure under the provisions of this subchapter. Subsequent appointees shall be persons licensed under the provisions of this subchapter.

(C) The Commissioner shall maintain: (1) a record of licenses and certificates granted and refused and of licenses and certificates revoked or suspended which record shall be available to the public; and (2) a complete record of all hearings conducted pursuant to section 2–492(B) in connection with the denial, suspension, or revocation of a license. A transcript of an entry in a record of hearing, properly certified, shall be prima facie evidence of the facts therein stated. (Jan. 8, 1971, Pub. L. 91–657, § 6, 84 Stat. 1958.)

EFFECTIVE DATE

See section 20 of Act Jan. 8, 1971, Pub. L. 91–657, set out as a note under § 2–481.

§ 2–486. Qualification requirements—Written examination—Application fee.

The Commissioner shall grant a license to practice psychology to each applicant who submits satisfactory proof that—

(A) he is of good moral character;

(B) he holds either (1) a doctoral degree in psychology from an accredited college or university and has completed two years of postgraduate experience acceptable to the Commissioner, such two years not to include terms of internship, or (2) a doctoral degree from an accredited college or university in a field determined by the Commissioner to be related to psychology and has completed two years of postgraduate experience: *Provided,* That his experience and training are considered by the Commissioner to be comparable to the requirements set forth in (B) (1) of this subsection;

(C) he has passed an examination, written or oral or both, the scope and form of which shall be determined by the Commissioner: *Provided,* That at any given examination session all examinations shall be uniform; and

(D) his application has been accompanied by the fees required by the Commissioner. (Jan. 8, 1971, Pub. L. 91–657, § 7, 84 Stat. 1958.)

EFFECTIVE DATE

See section 20 of Act Jan. 8, 1971, Pub. L. 91–657, set out as a note under § 2–481.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2–484.

§ 2–487. License without examination.

Within one year from and after the effective date of this subchapter, a license shall be issued without examination to any applicant who is of good moral character, who either maintains a residence or office, or participates in psychological activities as determined by the Commissioner, within the District of Columbia, who has submitted an application for license accompanied by the required fee, and who holds—

(A) a doctoral degree in psychology from an accredited college or university or other doctoral degree acceptable to the Commissioner, and has completed at least two years of postgraduate experience not including terms of internship; or

(B) a master's degree in psychology from an accredited college or university, and has engaged in psychological practice acceptable to the Commissioner for at least seven years after the attainment of his highest degree. (Jan. 8, 1971, Pub. L. 91–657, § 8, 84 Stat. 1958.)

EFFECTIVE DATE

See section 20 of Act Jan. 8, 1971, Pub. L. 91–657, set out as a note under § 2–481.

§ 2–488. Reciprocity.

The Commissioner may, in his discretion, grant a license without examination: (1) to any person who at the time of application is licensed or certified under the laws of a State or territory of the United States, or of a foreign country or province with standards which, in the opinion of the Commissioner, were substantially equivalent at the date of such certification or licensure to the requirements of this subchapter, or (2) to any person who has been certified by a national examining board: *Provided,* That the Commissioner determines that the examination given by the national examining board was as effective for the testing of professional competence as that required in the District of Columbia. (Jan. 8, 1971, Pub. L. 91–657, § 9, 84 Stat. 1959.)

EFFECTIVE DATE

See section 20 of Act Jan. 8, 1971, Pub. L. 91–657, set out as a note under § 2–481.

§ 2–489. Regulations—Fees.

(a) The District of Columbia Council is authorized to make regulations to carry out the purposes of this subchapter but may delegate the responsibility to any Board of Psychologist Examiners which may be appointed.

(b) The Commissioner is authorized to fix, increase, or decrease from time to time fees to be charged in such amounts as may be reasonably necessary to defray the approximate cost of administering the provisions of this subchapter. (Jan. 8, 1971, Pub. L. 91–657, § 10, 84 Stat. 1959.)

EFFECTIVE DATE

See section 20 of Act Jan. 8, 1971, Pub. L. 91–657, set out as a note under § 2–481.

§ 2–490. Renewal of license or certificate.

Every person licensed or certified to practice psychology who desires to continue the practice of psychology shall annually pay the required fee for which there will be issued a renewal of licensure or certificate. The Commissioner shall provide a written

reminder of the renewal date to every person licensed or registered under this subchapter, which reminder shall be mailed at least one month in advance of such date. A license or certificate not properly renewed as herein provided shall lapse. The Commissioner shall have the right to reinstate a lapsed license or certificate upon payment of the renewal fee plus a penalty fee. A psychologist who wishes to place his license upon an inactive status may do so by submitting notice thereof to the Commissioner. Such a psychologist may reactivate his license by payment of the renewal fee herein required unless his license has been inactive for a period exceeding five years, in which case he will be required to furnish the Commissioner evidence of his competence to continue or resume the practice of psychology. (Jan. 8, 1971, Pub. L. 91–657, § 11, 84 Stat. 1959.)

EFFECTIVE DATE

See section 20 of Act Jan. 8, 1971, Pub. L. 91–657, set out as a note under § 2–481.

§ 2–491. Denial, revocation, and suspension of license or certificate.

The Commissioner may refuse, revoke, or suspend licensure or certification if the person applying or the person licensed or certified be—

(A) convicted of a crime involving moral turpitude;

(B) found to be using any drug or any alcoholic beverage to an extent or in a manner dangerous to himself, any other person, or the public, or to an extent that such use impairs his ability to perform the work of a psychologist with safety to the public;

(C) convicted of a violation of this subchapter as provided in section 2–493;

(D) determined to be a mental incompetent by a court with proper jurisdiction; or

(E) found to have committed a violation of any provision of this Act or of standards for the ethical practice of psychology to be established in regulations issued by the Government of the District of Columbia. (Jan. 8, 1971, Pub. L. 91–657, § 12, 84 Stat. 1959.)

EFFECTIVE DATE

See section 20 of Act Jan. 8, 1971, Pub. L. 91–657, set out as a note under § 2–481.

§ 2–492. Procedure for suspension or revocation of license or certificate—Hearing—Review of decision.

(A) Proceedings leading toward the suspension or revocation of a license or certificate shall be begun by petition, setting forth good cause therefor, filed with the Commissioner and served on the respondent. The Commissioner may determine whether a license or certificate shall be suspended or revoked, and if it is to be suspended the duration of such suspension and the conditions under which such suspension shall terminate. Revocation of a license shall not preclude the issuance of a new license or registration after the passage of at least five years.

(B) Before the revoking, suspending, or refusing to issue a license or certificate for any cause under the provisions of this subchapter, the Commissioner shall give the person whose right to practice psychology is challenged an opportunity to be heard in person or by attorney, and to produce witnesses on his behalf. After such hearing, should the Commissioner decide to refuse, revoke, or suspend licensure or certification, he shall set forth in writing his reasons for so doing, and shall include detailed findings of fact.

(C) Any person aggrieved by a decision of the Commissioner under subsection (B) of this section may, within thirty days after receiving notice thereof, seek review of said decision in the District of Columbia Court of Appeals. Such review shall be subject to appeal to the United States Court of Appeals for the District of Columbia Circuit.

(D) In hearings conducted pursuant to subsection (B) of this section, the attendance and testimony of witnesses may be compelled by subpoena. Any person refusing to respond to such a subpoena shall be guilty of contempt of court. (Jan. 8, 1971, Pub. L. 91–657, § 13, 84 Stat. 1960.)

EFFECTIVE DATE

See section 20 of Act Jan. 8, 1971, Pub. L. 91–657, set out as a note under § 2–481.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2–485.

§ 2–493. Penalties.

Any person who shall practice psychology, as defined in this subchapter, without having a valid, unexpired, unrevoked, and unsuspended license or certificate of registration issued as provided in this subchapter, shall be deemed guilty of a misdemeanor and, upon conviction, shall be fined not more than $500, or confined in jail for not more than six months, or both. Prosecutions shall be in the name of the District of Columbia by the Corporation Counsel or one of his assistants. (Jan. 8, 1971, Pub. L. 91–657, § 14, 84 Stat. 1960.)

EFFECTIVE DATE

See section 20 of Act Jan. 8, 1971, Pub. L. 91–657, set out as a note under § 2–481.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–491, 2–494.

§ 2–494. Enjoining unauthorized practice of psychology.

The unlawful practice of psychology, as defined in this subchapter, may be enjoined by the United States District Court for the District of Columbia on petition by the Corporation Counsel for the District of Columbia, upon a finding that the person sought to be enjoined has committed a violation of the provisions of this subchapter. In any such proceeding it shall not be necessary to show that any person is individually injured by the actions complained of. If the respondent is found guilty of the unlawful practice of psychology, the court shall enjoin him from so practicing unless and until he has been duly licensed. The remedy by injunction herein given may be imposed in addition to, or in lieu of, criminal prosecution and punishment as provided in section 2–493. (Jan. 8, 1971, Pub. L. 91–657, § 15, 84 Stat. 1960.)

EFFECTIVE DATE

See section 20 of Act Jan. 8, 1971, Pub. L. 91–657, set out as a note under § 2–481.

§ 2–495. Commissioner to enforce subchapter.

It shall be the duty of the Commissioner of the District of Columbia to enforce the provisions of this subchapter. (Jan. 8, 1971, Pub. L. 91–657, § 16, 84 Stat. 1960.)

EFFECTIVE DATE

See section 20 of Act Jan. 8, 1971, Pub. L. 91–657, set out as a note under § 2–481.

§ 2–496. Competency of psychologists to testify.

Section 14–307 shall apply with respect to any person licensed or certified under this subchapter to the same extent that such section applies to physicians and surgeons. (Jan. 8, 1971, Pub. L. 91–657, § 17, 84 Stat. 1960.)

EFFECTIVE DATE

See section 20 of Act Jan. 8, 1971, Pub. L. 91–657, set out as a note under § 2–481.

§ 2–497. Appropriations authorized.

There is hereby authorized to be appropriated out of the revenue of the District of Columbia such sums as may be necessary to pay the expenses of administering and carrying out the purposes of this subchapter. (Jan. 8, 1971, Pub. L. 91–657, § 18, 84 Stat. 1960.)

EFFECTIVE DATE

See section 20 of Act Jan. 8, 1971, Pub. L. 91–657, set out as a note under § 2–481.

§ 2–498. Separability of provisions.

If any section of this subchapter, or any part thereof shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of any section or part thereof. (Jan. 8, 1971, Pub. L. 91–657, § 19, 84 Stat. 1961.)

EFFECTIVE DATE

See section 20 of Act Jan. 8, 1971, Pub. L. 91–657, set out as a note under § 2–481.

Chapter 5.—OPTOMETRISTS

§ 2–501. "Optometry" defined.

NOTES TO DECISIONS

Construction

Purpose of statute regulating the practice of optometry was to provide protection for the public and legislature intended examination of eye and adaptation of lenses to be separate acts of optometry. *N. Fields* v. *District of Columbia* (D.C. App. 1967, 232 A. 2d 300).

§ 2–502. Practice of optometry without license prohibited—Misrepresentation—False impersonation—Penalties.

NOTES TO DECISIONS

Basis for review

Although a number of individuals will be affected by a decision of District of Columbia Court of Appeals that of itself is not enough to require United States Court of Appeals to exercise its discretion and review the decision; rather, the nature of the question presented and the soundness of the decision are the proper considerations. *N. Fields* v. *District of Columbia* (1968, 404 F. 2d 1323, 131 U.S. App. D.C. 347).

District of Columbia Court of Appeals' decision adjudging that petitioner, an optician, had unlawfully practiced optometry without a license by his unsupervised fitting of contact lenses was proper and United States Court of Appeals would not in its discretion review such decision. *Id.*

United States Court of Appeals is not required to review District of Columbia Court of Appeals decision when what is involved is interpretation of a local statute, regulation, or ordinance; the interpretation given is within the zone of what is reasonable; the prosecution is for an offense *malum prohibitum* that is brought by the District of Columbia and not by the United States; and the case does not involve overtones of fundamental rights or substantial allegations of executive action as *ultra vires* or overreaching. *Id.*

Practice of optometry

Evidence showed that acts performed by optician in fitting patient's lenses involved areas of judgment and skill necessary to the adaptation of lenses within the meaning of optometry statute. *N. Fields* v. *District of Columbia* (D.C. App. 1967, 232 A. 2d 300).

Optician's contention that he would refer patient back to physician who had originally written prescription for glasses did not excuse his practice of optometry at the time of fitting. *Id.*

§ 2–503. Board of Optometry—Qualifications—Tenure—Oath—Removal.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–505. By-laws and regulations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–506. Secretary-treasurer to give bond.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–507. Secretary-treasurer to receive compensation and pay expenses out of funds in custody of board.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–508. Official seal—Records—Reports.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–512. Changes in educational standards authorized.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(48) of Reorg. Plan No. 3 of 1967, effective August 11, 1967, except as provided in section 504(b) of the Plan, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 6.—PHARMACY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 33–701.

§§ 2–601 to 2–605.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 33–708.

§ 2–606. Renewal of licenses or permits to sell poisons—Renewal obtained by fraud—Failure of board to renew—Hearings—Attendance of witnesses—Report of findings—Revocation of license—Review in District of Columbia Court of Appeals—Public display of license.

* * * * *

The said Board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The chairman and the secretary of the Board shall have power to issue subpoenas, and upon the failure of any person to attend as a witness when duly subpoenaed or to produce documents when duly directed by said Board, the Board shall have power to refer the said matter to any judge of the Superior Court of the District of Columbia, who may order the attendance of such witness or the production of such books and papers or require the said witness to testify, as the case may be; and upon the failure of the witness to attend, to testify, or to produce such books or papers, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpoena issued or to testify in a case pending before said court.

The board shall make a written report of its findings after such hearing, which report, with a transcript of the entire record of the proceedings, shall be filed with the Commissioners of the District of Columbia, and, if the board's finding is adverse to the person seeking reissuance of his license or permit, the license or permit shall stand revoked and annulled at the expiration of thirty days from the filing of the report, unless a petition for review is filed in the District of Columbia Court of Appeals, and a stay is granted.

* * * * *

(As amended July 29, 1970, Pub. L., 91–358, title I, §§ 155(c)(6), 164(k), 84 Stat. 570, 586.)

AMENDMENTS

1970—Section 155(c)(6) of Act July 29, 1970, Public Law 91–358, amended the third paragraph of section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

Section 164(k) of Act of July 29, 1970, Public Law 91–358 amended the fourth paragraph of section by striking out ", in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–607. Board of Pharmacy—Creation—Appointment—Tenure—Removal—Oath—Meetings—Seal — Bond of treasurer—Duty to examine applicants.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–608. Board of Pharmacy to have same powers as Commission on Licensure to Practice the Healing Art—Accounting—Records—Reports.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(49) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section insofar as they relate to "making and altering rules for the conduct of business of agency administering, and for the execution and enforcement of, the Act of May 7, 1906", to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33–401, 33–708.

§ 2–609. Fees—Expenses—Compensation of Board.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§§ 2–610 to 2–617.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 33–708.

Chapter 7.—PODIATRY

§ 2–701. Board of Podiatry Examiners—Appointment—Term of office—Eligibility—Qualifications.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–702. Officers—Bond—Rules and regulations for admission to practice—Seal—Record of proceedings—Register of credentials and of licenses issued or revoked—Certified copy as evidence—Quorum—Annual report of finances and official acts.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(50) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section insofar as they relate to adopting rules and regulations and adopting a seal, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–703. Attendance of witnesses—Production of books and papers.

The said Board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The president and secretary-treasurer shall have power to issue subpenas and each shall have authority to administer oaths. Upon the failure of any person to attend as a witness, when duly subpenaed, or to produce books and papers when duly directed by the said Board, the Board shall have power to refer the said matter to any judge of the Superior Court of the District of Columbia, who may order the attendance of such witness, or the production of such books and papers, or require the said witness to testify, as the case may be, and upon the failure of the witness to attend, to testify, or to produce such books or papers, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpena issued or to testify in a case pending before said court. (June 29, 1940, 54 Stat. 697, ch. 457, § 3; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(7), 84 Stat. 570.)

AMENDMENT

1970—Section 155(c)(7) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–704. Duty of secretary-treasurer to enforce law—Jurisdiction of court—Services of corporation counsel—Investigation by police, board, or its assistants.

It shall be the duty of the secretary-treasurer of the Board to enforce the provisions of all laws relating to the practice of podiatry in the District of Columbia, and all violations of said laws shall be prosecuted in the Superior Court of the District of Columbia by the Corporation Counsel or one of his assistants; and the Corporation Counsel and his assistants shall render such other legal services as may from time to time be required by the Board.

The major and superintendent of the Metropolitan Police Department shall detail such members of his force as may be necessary to assist the Board in the investigation and prosecutions incident to the enforcement of this chapter. The board is authorized to employ such other persons as it deems necessary to assist in the investigation and prosecutions incident to the enforcement of this chapter. (June 29, 1940, 54 Stat. 697, ch. 457, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§§ 2–705, 2–706.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 33–708.

§ 2–707. Revocation or suspension of license—Jurisdiction of court—Grounds.

The Board may revoke or suspend the license of any podiatrist in the District of Columbia upon proof satisfactory to the Board—

(a) That said license or registration was procured through fraud or misrepresentation.

(b) That the holder thereof has been convicted of a felony.

(c) That the holder thereof is guilty of chronic or persistent inebriety, or addiction to drugs.

(d) That the holder thereof is guilty of advertising professional superiority or the performance of professional services in a superior manner; advertising prices for professional service; advertising by means of a large display, glaring light signs, or containing as a part thereof the representation of the human foot or leg or any part thereof; employing or making use of solicitors or free publicity press agents, directly or indirectly; or advertising any free podiatry work, or free examination; or advertising to guarantee podiatry service.

(e) That such holder is guilty of hiring, supervising, permitting, or aiding unlicensed persons to practice podiatry.

(f) That such holder is guilty of unprofessional conduct.

The following acts on the part of a podiatrist are hereby declared to constitute unprofessional conduct:

(1) Practicing while his license is suspended.

(2) Wilfully deceiving or attempting to deceive the board or their agents with reference to any matter under investigation by the board.

(3) Advertising by any medium other than the personal carrying of a modest professional card or the display of a modest window or street sign at the licensee's office, which professional card or window or street sign shall display only the name, address, profession, office hours, and telephone connections of the licensee; except in the case of announcement of change of address or the starting of practice, when the usual size card of announcement may be used. The size of said cards or signs shall be designated by the board.

(4) Practicing podiatry under a false or assumed name or corporate name other than a partnership name containing the names of the partners, or any name except his full proper name which shall be the name used in his license granted by the board.

(5) Violating this chapter or aiding any person to violate this chapter or to knowingly violate the podiatry act of any state or territory.

(6) Practicing in the employment of, or in association with, any person who is practicing in an unlawful or unprofessional manner.

The foregoing specifications of acts constituting unprofessional conduct shall not be construed as a complete definition of unprofessional conduct nor as authorizing or permitting the performance of other or similar acts not denounced, or as limiting or restricting the Board from holding that other or similar acts also constitute unprofessional conduct. (June 29, 1940, 54 Stat. 698, ch. 457, § 7; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, § 164(c)(1), title I, 84 Stat. 585.)

AMENDMENT

1970—Section 164(c)(1) of Act July 29, 1970, Public Law 91–358 amended section (A) by striking out all that precedes paragraph (a) and inserting in lieu thereof "The Board may revoke or suspend the license of any podiatrist in the District of Columbia upon proof satisfactory to the Board—", and (B) by striking out "the said court" in the last sentence and inserting in lieu thereof "the Board".

For stricken provisions see 1967 Edition of the Code.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–708. Revocation or suspension of license—Procedure—Petition—Appeal—Terms of suspension.

Suspension or revocation by the Board of any license issued or registration effected under this Act, with respect to a person guilty of misconduct or professionally incapacitated, shall be governed by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510). (June 29, 1940, 54 Stat. 699, ch. 457, § 8; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, § 164(c)(2), title I, 84 Stat. 585.)

AMENDMENT

1970—Section 164(c)(2) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§§ 2–709 to 2–719.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 33–708.

Chapter 8.—VETERINARIANS

§ 2–801. Board of Examiners in Veterinary Medicine—Creation—Appointment, tenure, and removal.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–802. Election of officers—Rules and regulations—Register of applicants—Bond—Reports.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(51) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section insofar as they relate to making, altering and amending rules and regulations and bonding provisions, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–803. Applications for license—Qualifications—Fees — Expenses — Examinations — Applications preserved.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(52) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section insofar as they relate to determining, authorizing, and directing the subjects to be included in examinations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–804. Reciprocal relations with similar boards.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(53) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–805. Practitioners exempt from examination.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§ 2–806. Appeal from board—Board of review—Fees and compensation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§§ 2–807 to 2–809.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 33–708.

§ 2–810. Revocation of licenses—Causes—Procedure—Appeals—Costs.

The Board of Examiners in Veterinary Medicine may, by a vote of four members, revoke or suspend for a time certain the license of any person to practice veterinary medicine or any branch thereof in the District of Columbia after notice and hearing, for any of the following causes, namely: The employment of fraud or deception in passing the exami-

nations or in obtaining a license, chronic inebriety, or conviction of crime involving moral turpitude. The method of complaint, form, and length of notice, and time of hearing charges against any licensee for any of the above causes shall be according to the rules and regulations to be made, subject to the approval of said Commissioners, as hereinbefore provided. Appeal from the decision of the board may be taken to the District of Columbia Court of Appeals. The Commissioners of the District of Columbia, the board of review, and the board of examiners in veterinary medicine shall not, nor shall any of them, be required to pay costs, or give bond or security on appeal, or other proceeding in any court of the District of Columbia growing out of any official duty imposed on them, or any of them, by this chapter. (Feb. 1, 1907, 34 Stat. 873, ch. 442, § 10; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88–60, § 6; Dec. 23, 1963, 77 Stat. 616, Pub. L. 88–241, § 5; July 29, 1970, Pub. L. 91–358, title I, § 164(i), 84 Stat. 585.)

AMENDMENT

1970—Section 164(i) of Act July 29, 1970, Public Law 91–358 amended the third sentence of section by striking out ", as provided by section 11–742, 17–303, 17–304, 17–305(b), 17–306, and 17–307 of the District of Columbia Code".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–708.

§§ 2–811, 2–812.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 33–708.

Chapter 9.—ACCOUNTANTS

§ 2–911. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–912. Certified public accountancy—Certificate required for use of titles or practice—Partnerships and corporations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2–926.

§ 2–913. Board of Accounting—Corporation, qualifications, tenure, compensation, and removal.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS

Reorganization Order No. 59, part XIV thereof, established a Board of Accounting and delegated certain functions in the manner and particulars therein described. For details of part XIV, see the order set out in the appendix to title 1.

§ 2–914. Rules and regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(423) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to adopting rules and regulations to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–915. Certified public accountants—Issuance of certificate—Qualifications—Prior applications and certificates.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–916. Education and experience required.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–917. Waiver of examination and endorsement of C.P.A. certificate—Rights of holder of endorsed certificate.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–918. Registration of certified public accountants—Failure to register.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–919. Registration of partnerships practicing public accountancy—Requirements—Use of titles.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–920. Hearings, and revocation, suspension, or denial of certificate, etc.—Censure—Procedure.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–921. Witnesses and records at hearings—Nature of hearings.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–922. Revocation or suspension of partnership registration—Censure.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–923. Administrative procedure for public hearings.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–924. Issuance of new certificate, etc. after revocation—Permitting registration after registration revoked.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–926. Penalty for violations—Prosecutions by Corporation Counsel—Jurisdiction.

Any person who violates any provision of section 2–912 shall be guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not more than $500 or to imprisonment for not more than one year, or both such fine and imprisonment. Whenever the Commissioners have reason to believe that any person is liable to punishment under this section, they may refer the facts to the Corporation Counsel of the District of Columbia, who may cause the proper proceedings to be brought, if, in his judgment, such is warranted. Prosecutions for violations of any provision of section 2–912 shall be conducted in the Superior Court of the District of Columbia in the name of the District of Columbia by the Corporation Counsel or any of his assistants. (Sept. 16, 1966, 80 Stat. 792, Pub. L. 89–578, § 17; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–930. Fees for costs of administration—Disposition of funds.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 10.—ARCHITECTS

§ 2–1001. Board of Examiners—Creation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(54) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section insofar as they relate to the making of rules, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–1003. Tenure—Filling vacancies.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1004. Oath of office.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1010. Roster of architects—Report.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1023. Fees.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(55) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–1028. Procedure for revocation—Appeal.

The proceedings for the annulment of registration, that is, the revocation of a certificate, shall be begun by filing written charges against the accused with the Board of Examiners and Registrars of Architects by the Board itself or by a complainant. A copy of the charges, together with a notice of the time and place of hearing, shall be served on the accused at least thirty calendar days in advance of the hearing, which shall be postponed if necessary to give the requisite notice. Where personal services can not be made within the District of Columbia, service may be made by publication or personal service in accordance with such rules as the Board adopts, following generally and in principle the provisions of sections 13–336 to 13–338 and 13–340 of the District of Columbia Code. At the hearing, the accused may be represented by counsel, may introduced [1] evidence, and may examine and cross-examine witnesses. The secretary of the Board may administer oaths. The Board shall make a written report of its findings, which report, with a transcript of the entire record of the proceedings, shall be filed with the Commissioners of the District of Columbia, and, if the Board's finding is adverse to the accused, his certificate of registration shall stand revoked and annulled at the expiration of thirty days from the filing of the report, unless a petition for review is filed in the District of Columbia Court of Appeals, and a stay is granted. (Dec. 13, 1924, 43 Stat. 717, ch. 9, § 28; May 29, 1928, 45 Stat. 951, ch. 861; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Dec. 23, 1963, 77 Stat. 616, Pub. L. 88–241, § 6; July 29, 1970, Pub. L. 91–358, title I, § 164(l), 84 Stat. 586.)

AMENDMENT

1970—Section 164(l) of Act July 29, 1970, Public Law 91–358 amended section by striking out ", in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1029. Attendance of witnesses and production of documents.

The said Board shall have power to require the attendance of persons and the production of books and papers and to require such persons to testify in any and all matters within its jurisdiction. The chairman and the secretary of the Board shall have power to issue subpœnas, and upon the failure of

[1] So in original.

any person to attend as a witness when duly subpœnaed or to produce documents when duly directed by said Board, the Board shall have power to refer the said matter to any judge of the Superior Court of the District of Columbia, who may order the attendance of such witness or the production of such books and papers or require the said witness to testify, as the case may be; and upon the failure of the witness to attend, to testify, or to produce such books or papers, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpœna issued or to testify in a case pending before said court. (Dec. 13, 1924, 43 Stat. 717, ch. 9, § 29; May 29, 1928, 45 Stat. 952, ch. 861; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(8), 84 Stat. 570.)

AMENDMENT

1970—Section 155(c)(8) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(56) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 11.—BARBERS

§ 2–1102. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1103. Board of Barber Examiners—Qualifications—Tenure—Removal—Register—Power to make rules and regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(57) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to adopting rules and sanitary regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–1110. Refusal to issue, renew, or restore certificate—Revocation—Appeal.

The Board may refuse to issue, renew, restore, or may revoke a certificate for habitual drunkenness or habitual addiction to the use of morphine, cocaine, or any other habit-forming drug or for the violation of any of the provisions of this chapter, but such action may be taken by the Board only after notice, and an opportunity for a full hearing is given to the person affected thereby.

An appeal may be taken from the action of the Board to the District of Columbia Court of Appeals. (June 7, 1938, 52 Stat. 622, ch. 322, § 10; Aug. 31, 1954, 68 Stat. 1048, ch. 1173, § 1; July 8, 1963, 77 Stat. 78, Pub. L. 88–60, § 6; Dec. 23, 1963, 77 Stat. 617, Pub. L. 88–241, § 7; July 29, 1970, Pub. L. 91–358, § 164(j), title I, 84 Stat. 585.)

AMENDMENT

1970—Section 164(j) of Act July 29, 1970, Public Law 91–358 amended section by striking out "in the manner provided by sections 11–742, 17–303, 17–304, 17–305(b), 17–306, and 17–307 of the District of Columbia Code".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 2–1112. Conduct of examinations—Expenses and compensation—Appointment of clerk and inspectors—Qualifications.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1114a. Authority to prescribe regulations for posting prices of services—Authority to impose fine—Limitation of fine.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(58) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 12.—BOXING COMMISSION

§ 2–1210. Abolition of Boxing Commission—Creation of District Boxing Commission—Composition—Eligibility requirements—Compensation and term of office—Removal—Annual report to Commissioners.

REFERENCE IN TEXT

Section 58 of title 5, U.S. Code, referred to in text, was repealed by section 402(a)(1) of Act Aug. 19, 1964, 78 Stat. 492. For current dual pay provisions, see § 2–1226 and 5 U.S.C. 5531, 5533.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1211. Employment of secretary, clerical and administrative personnel, inspectors and physicians—Compensation—Payment of salaries and expenses.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1212. Powers and duties—Supervision and regulation of professional boxing—Cooperation in promotion of amateur and collegiate boxing—Donation of equipment—Definitions.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(59) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to making and amending rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section

406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–1217. Application for license—Fee payable in advance—Posting of bond—Recovery on bond.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1219. Covering of receipts into trust fund—Payment of salaries and expenses from fund—Limitation—Disposition of excess moneys—Advances for expenses and compensation—Sale or redemption of bonds owned by Commission.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 1–254.

§ 2–1220. Quarterly audit of accounts.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1224. Prosecution on information.

Prosecutions for violations of the provisions of this chapter, or of any rule or regulation made under the authority thereof, shall be on information in the Superior Court of the District of Columbia by the corporation counsel of the District of Columbia or any of his assistants. (Dec. 20, 1944, 58 Stat. 826, ch. 612, § 15; July 8, 1963, 77 Stat. 77, Pub. L. 88–60 § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 13.—COSMETOLOGISTS

§ 2–1301. Examination and licensing of those engaged in cosmetology—Definitions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2310a.

§ 2–1302. Board of Cosmetology—Qualifications—Tenure — Removal — Officers — Compensation — Bond—Meetings—Quorum—Records.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2310a.

§ 2–1303. Regulations by the board.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(60) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2310a.

§ 2–1304. Powers and duties of the board—Suspension, revocation of license—Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2310a.

§ 2–1305. Appeal from action of the board.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2310a.

§§ 2–1306 to 2–1317.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 47–2310a.

§ 2–1318. Examinations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2310a.

§§ 2–1319 to 2–1328.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 47–2310a.

Chapter 14.—PLUMBERS

§ 2–1401. Plumbing board—Appointment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1402. Licenses—Examination of applicants—Issuance.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1404. Bond.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1405. License—Renewal, fee, revocation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(61) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to fixing fees for licenses, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–1408. Penalties.

Any person violating any of the provisions of this chapter shall, on conviction thereof in the Superior Court of the District of Columbia, be punished by a fine of not less than $5.00 nor more than $100; and in default of payment of such fine

such person shall be confined in the workhouse of the District of Columbia for a period not exceeding six months; and all prosecutions under this chapter shall be in the Superior Court of the District of Columbia, in the name of the District of Columbia. (June 18, 1898, 30 Stat. 477, ch. 467, § 8; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 15.—STEAM AND OTHER OPERATING ENGINEERS

§ 2–1501. Steam and other operating engineers—License required.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1502. Board of examiners—Constitution—Examination of applicants—Compensation of Board members—Inspection of engines and boilers.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(62) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to providing rules and regulations, and prescribing tests to which engines and steam boilers shall be subjected, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–1506. Penalty for employing unlicensed operator—Boilers exempt.

Any owner or lessee of any engine or steam boiler, or the secretary of any corporation, who shall employ a steam or other operating engineer as such who has not been regularly licensed to act as such, or any person operating without a license or in violation of the provisions of this chapter, shall, on conviction thereof by the Superior Court of the District of Columbia, be fined $40.00: *Provided,* That boilers used for steamheating, where the water returns to the boiler by gravity without the use of a pump and injector or inspirator, shall be exempt from the provisions of this section. (Feb. 28, 1887, 24 Stat. 427, ch. 272, § 6; Mar. 4, 1925, 43 Stat. 1284, ch. 545; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 17.—ARMORY BOARD

SUBCHAPTER I.—GENERAL PROVISIONS

§ 2–1702. Membership of board—Term—Appointment of alternates—Delegation of authority—Compensation—Election of chairman.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS OF THE BOARD OF COMMISSIONERS

Section 501 of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"Status of certain agencies. (a) Functions now vested in any agency listed in subsection (b) of this section, or in any officer or body of or under such agency, shall remain so vested; but all functions of the Board of Commissioners of the District of Columbia and all functions of the President of that Board or of any other member of the Board, relating to the listed agency or its functions or to an officer or body thereof or to the functions of such officer or body shall be deemed to be transferred by Part IV of this reorganization plan.

"(b) The following agencies of the Corporation are the agencies referred to in subsection (a) of this section:

"(1) Board of Education (including the public school system).
"(2) Board of Library Trustees (including the public libraries).
"(3) Recreation Board.
"(4) Public Service Commission.
"(5) Zoning Commission.
"(6) Zoning Advisory Council.
"(7) Board of Zoning Adjustment.
"(8) Office of the Recorder of Deeds.
"(9) Armory Board."

§ 2–1703. Control and jurisdiction over District of Columbia National Guard Armory—Maintenance and repair.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1706. Secondary purposes—Authorization.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SUBCHAPTER II.—DISTRICT OF COLUMBIA STADIUM

§ 2–1720. Purpose—Authorization of Armory Board to construct Stadium—Plans.

NOTES TO DECISIONS

Exemption from antitrust laws

In this case, the court held that since the Armory Board was authorized to provide the people of the District of Columbia with a suitable stadium and was obligated to provide for payment of construction, operation and maintenance through a bond issue with principal payable not later than 30 years from date of issuance, the Board's leasing of stadium to professional football team for 30 years under lease providing that at no time during its term would the stadium be let or rented to any professional football team other than lessee was governmental action and as such was exempt from antitrust laws and neither the Armory Board nor the football team acted illegally in entering into the lease. *N. F. Hecht et al.* v. *Pro-Football, Inc., et al.* (1970, 312 F. Supp. 472).

§ 2–1721. Acquisition of site by Secretary of the Interior—Construction, maintenance and operation by Board.

NOTES TO DECISIONS

Exemption from antitrust laws

In this case, the court held that since the Armory Board was authorized to provide the people of the Dis-

trict of Columbia with a suitable stadium and was obligated to provide for payment of construction, operation and maintenance through a bond issue with principal payable not later than 30 years from date of issuance, the Board's leasing of stadium to professional football team for 30 years under lease providing that at no time during its term would the stadium be let or rented to any professional football team other than lessee was governmental action and as such was exempt from antitrust laws and neither the Armory Board nor the football team acted illegally in entering into the lease. *N. F. Hecht et al.* v. *Pro-Football, Inc., et al.* (1970, 312 F. Supp. 472).

§ 2–1723. Authority of Board outlined.

NOTES TO DECISIONS

Exemption from antitrust laws

In this case, the court held that since the Armory Board was authorized to provide the people of the District of Columbia with a suitable stadium and was obligated to provide for payment of construction, operation and maintenance through a bond issue with principal payable not later than 30 years from date of issuance, the Board's leasing of stadium to professional football team for 30 years under lease providing that at no time during its term would the stadium be let or rented to any professional football team other than lessee was governmental action and as such was exempt from antitrust laws and neither the Armory Board nor the football team acted illegally in entering into the lease. *N. F. Hecht et al.* v. *Pro-Football, Inc., et al.* (1970, 312 F. Supp. 472).

§ 2–1724. Deposit of receipts into operating fund—Use of funds—Record of cost and maintenance to be kept—Board may advance moneys for operation and maintenance—Reimbursement—Surplus moneys to be placed in sinking fund—Statement to be filed with Congress.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(63) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section insofar as they relate to the authority and responsibility of the Commissioners, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–1727. Limitation on indebtedness—Limitation on liability of Board members—Deficits to be included in budget estimates—Commissioners may borrow from Secretary of Treasury—Repayment—Bonds guaranteed by the United States.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(63) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section insofar as they relate to the authority and responsibility of the Commissioners, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–1728. Filing of annual reports with Congress.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(63) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section insofar as they relate to the authority and responsibility of the Commissioners, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 18.—PROFESSIONAL ENGINEERS

§ 2–1802. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1805. Board of registration—Appointment of members—Qualifications—Terms—Removal of members.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1806. Compensation of members of Board.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–1808. General powers of Board.

* * * * *

(n) *Administrative rules and regulations; employees.*—To adopt, amend, rescind, promulgate, and enforce such administrative rules and regulations not inconsistent with this chapter, as are deemed necessary and proper by the Board to carry into effect the powers conferred by this chapter. To employ such clerical or other assistants as are necessary for the proper performance of its duties. The regular annual employees of the Board shall, for the purpose of laws relating to compensation, classification, retirement, and leave, be employees of the District of Columbia. The Board may at its discretion fix and change from time to time, without reference to section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters], the compensation of employees of the Board employed on a temporary or part-time basis.

(o) *Enforcement of laws; investigations; attendance of witnesses; production of books and papers; subpena procedure; witness fees.*—To enforce the provisions of this chapter, to investigate for unauthorized and unlawful practice, to employ such persons as it may deem necessary to assist in the investigations and prosecutions incident to enforcement, to require the attendance of witnesses and the production of books and papers, and to require such witnesses to testify as to any and all matters within its jurisdiction. The Chairman and secretary-treasurer of the Board shall have power to issue subpenas, and each shall have authority to administer oaths. Upon the failure of any person to attend as a witness, when duly subpenaed, or to produce documents when duly directed by said Board, the Board shall have power to refer the said matter

to any justice of the Superior Court of the District of Columbia, who may order the attendance of such witness, or the production of such documents, or require the said witness to testify, as the case may be, and upon the failure of the witness to attend, to testify, or to produce such documents, as the case may be, such witness may be punished for contempt of court as for failure to obey a subpena issued or to testify in a case pending before said court. Witnesses who have been subpenaed by the Board, and who testify if called upon, shall be paid the same fees that are paid witnesses in the Superior Court of the District of Columbia.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 155(c)(9)(A), 84 Stat. 570.)

CODIFICATION

In subsec. (n) the reference "section 305, chapter 51, subchapter III of chapter 53, and sections 5341, 5342, 5504, 5509 and 7154, of title 5, U.S. Code [relating to the classification of government employees and related matters]" was substituted for "the Classification Act of 1949, as amended", on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Classification Act of 1949, as amended (Oct. 28, 1949, 63 Stat. 954, ch. 782, as amended), was repealed by act Sept. 6, 1966, 80 Stat. 632 Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and is now covered by the provisions of title 5, U.S.C., cited.

AMENDMENT

1970—Section 155(c)(9)(A) of Act July 29, 1970, Public Law 91–358, amended subsec. (o) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402 (64, 65, 66, 67 and 68) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (c), (j), (*l*), (n), (*o*) to the District of Columbia Council, to the extent and in the particulars specified in the pars. above enumerated, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–1809. Complaints — Hearings — Proceedings — Appeals.

(a) The Board may upon its own motion, and shall upon the sworn complaint in writing of any person setting forth charges which would constitute grounds for refusal, suspension, or revocation of a certificate, as set forth in section 2–1808 (p), investigate the acts of any person holding or claiming to hold a certificate. All charges, unless dismissed by the Board as unfounded or trivial, shall be heard by the Board within three months after the date on which they shall have been filed.

(b) The Board shall, at least thirty days prior to the date set for the hearing, notify the accused in writing, of any charges made, and shall afford him an opportunity to be heard in person or by counsel in reference thereto. Such notice may be served by its delivery personally to the accused licensee by the United States marshal in the manner prescribed for service of original process in the Superior Court of the District of Columbia, or by mailing it by registered mail or by certified mail with return receipt demanded, to the place of business last theretofore specified by the accused in his last notification to the Board. At the time and place fixed in the notice, the Board shall proceed to hearing of the charges and both the accused and the complainant shall be accorded ample opportunity to present in person or by counsel, such testimony, evidence, and argument as may be pertinent to the charges or to any defense thereto. The Board may continue such hearing from time to time and shall give notice in writing to all parties in interest of the date and hour to which the hearing has been continued, and the place at which it is to be held.

(c) The Board shall preserve a complete record of all proceedings at the hearing of any case wherein a certificate is refused, revoked, or suspended. The notice of hearing, complaint, and all other documents in the nature of pleadings and written motions filed in the proceedings, the transcript of testimony, and the orders of the Board shall be the record of such proceedings. The Board shall furnish a transcript of such record at cost to any person interested in such hearing.

(d) If, after completion of the hearing, the Board shall be of the opinion that the accused is guilty of the charges, or any of them, the Board shall issue an order refusing, suspending, or revoking the certificate. Such order shall be served upon the accused person either personally or by mailing it by registered mail to the address specified by the accused person in his last notification to the Board.

(e) Any person aggrieved by the action of the Board may appeal as provided in the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510). (Sept. 19, 1950, 64 Stat. 862, ch. 953, § 9; June 11, 1960, 74 Stat. 202, Pub. L. 86–507, § 1(41); July 29, 1970, Pub. L. 91–358, §§ 155(c)(9)(B), 164(n), title I, 84 Stat. 570, 586.)

AMENDMENTS

1970—Section 155(c)(9)(B) of Act July 29, 1970, Public Law 91–358, amended subsection (b) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

Section 164(n) of Act July 29, 1970, Public Law 91–358 amended section—

(1) by amending subsection (e) to read as follows:

"(e) Any person aggrieved by the action of the Board may appeal as provided in the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510).", and

(2) by striking out subsections (f), (g), and (h).

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

§ 2–1813. Fees—Payment of expenses—Audit.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(69) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other

functions of the Board of Commissioners, under this section with respect to the bonding provisions, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–1815. Prosecutions.

(a) All violations of laws relating to the practice of engineering in the District of Columbia shall be prosecuted in the Superior Court of the District of Columbia by the corporation counsel. The corporation counsel shall render such other legal services as may from time to time be required by the Board.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (a) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 2–1816. Annual report.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 19.—COUNCIL ON LAW ENFORCEMENT

§ 2–1901. Council on Law Enforcement in the District of Columbia.

AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (b)(11) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

Section 157(f) of Act July 29, 1970, Public Law 91–358 amended subsection (b) by striking out paragraph (12) and by redesignating paragraphs (13) through (15) as paragraphs (12) through (14), respectively.

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 20.—PAWNBROKERS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 28:9–203.

§ 2–2001. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–2002. Licenses required of pawnbrokers.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–2003. Appointment of attorney and application for licenses.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(70) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (b)(4) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–2004. Bond provisions—Annual renewal.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–2005. Issuance of license.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–2006. Revocation, suspension, and renewal of licenses.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–2007. Enforcement provisions—Commissioners to investigate licensees—Production of records—Contempt proceedings—Filing of reports—Preservation of records—Review of Commissioners' decisions

(a) The provisions of this chapter shall be enforced by the Commissioners, who are authorized to make such rules and regulations in addition hereto and not inconsistent herewith, as may be necessary for the enforcement of this chapter. The Commissioners shall make such examination and investigations of the affairs, business, office, and records of every licensee, and such further examinations or investigations as they shall deem necessary for the purpose of discovering violations of this chapter or of securing information necessary for its proper enforcement. For the purpose of making such examinations or investigations the Commissioners and their duly designated representatives shall have authority to require by subpena the production of books, papers, and records and the attendance, and examination under oath, of all persons whomsoever whose testimony they may require relative to the loans or business of any such licensee, and shall have free access to the accounts, papers, records, files, safes, vaults, offices, and places of business used in connection with any business conducted under any license issued in accordance with this chapter. In the event of contumacy or refusal to obey any such subpena or requirement under this section, the Commissioners may make application to the Superior Court of the District of Columbia for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, §§ 155(a), 164(m), 84 Stat. 570, 586.)

AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (a) by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

Section 164(m) of Act July 29, 1970, Public Law 91–358 amended subsection (a) by striking out "in accordance with the provisions of subsection (c), section 5 of the Act of April 1, 1942 (56 Stat. 193, ch. 207; sec. 11–756(c), D.C. Code, 1951 edition)".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(71) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) relating to the making of rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix title 1.

§ 2–2008. Advertising—Statement of rates.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–2009. Investigations of economic conditions relating to pawnbrokerage business—Fixing of interest rates—Payment of loan.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(72) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) relating to the determination or fixing of maximum rates of interest, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–2011. Pawnbroker to keep accurate records of loan transactions—Books open to inspection by Commissioners—Police to be admitted by pawnbroker during business hours—Divulging contents of records—Daily transcripts of loan transactions to be filed with Chief of Police.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–2017. Rules and regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(73) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 21.—CHARITABLE SOLICITATIONS

§ 2–2101. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–2102. Powers of Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(74) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a)(7) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–2103. Certificate of registration—Nonapplicability to educational or religious groups—Other exemptions by regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(75) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (d) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–2104. Application for and issuance of certificate.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(76) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) to the extent and in the particulars specified in par. 76, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–2106. Registrant required to make report of contributions—Time.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–2107. Representations as to truth or finding by Commissioners in regard to registration certificate or solicitor card prohibited.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–2109. Commissioners may appoint advisory committee—Composition of committee—Secretary.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–2110. Promulgation of regulations—Hearing.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(77) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–2112. Penalties—Prosecutions in name of District of Columbia—Action to enjoin violations of this chapter or regulations.

* * * * *

(c) The Corporation Counsel of the District of Columbia or any of his assistants is hereby empowered to maintain an action or actions in the Superior Court of the District of Columbia in the name of the District of Columbia to enjoin any person from soliciting in violation of this chapter or in violation of any regulation made pursuant to this chapter. (As amended July 29, 1970, Pub. L. 91–358, title I, § 155(c)(10), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(10) of Act July 29, 1970, Public Law 91–358, amended subsec. (c) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 22.—PUBLIC DEFENDER SERVICE

Sec.

2–2221. Redesignation of Legal Aid Agency as Public Defender Service.
2–2222. Functions and authority of Service—Persons who may be represented—Use of private attorneys—Determination of financial capability of applicant—False information—Penalty.
2–2223. Board of Trustees—Appointment—Members—Powers—Term of office—Vacancies—Legal Aid Society Trustees to continue in office—Trustees deemed employees of District for purpose of suit.
2–2224. Director and Deputy Director—Duties—Salaries.
2–2225. Employment of attorneys and other personnel—Compensation—Private practice by attorneys not permitted.
2–2226. Reports by Board of Trustees—Annual audits by certified public accountants.
2–2227. Appropriations—Grants and contributions.
2–2228. Transition provisions.

§§ 2–2201 to 2–2210. Repealed. July 29, 1970, Pub. L. 91–358, § 309, title III, 84 Stat. 657.

Sections being section 1 to 12 of the Act of June 27, 1960, 74 Stat. 229, Pub. L. 86–531, set up the Legal Aid Agency in the District of Columbia to provide legal representation of indigents in judicial proceedings and spelled out the rights and procedures thereunder. The successor to the Agency is the Public Defender Service. See section 2–2221 to 2–2228.

EFFECTIVE DATE OF REPEAL

See note to section 22–2221.

§ 2–2221. Redesignation of Legal Aid Agency as Public Defender Service.

The Legal Aid Agency for the District of Columbia is redesignated the District of Columbia Public Defender Service (hereafter in this chapter referred to as the "Service"). (July 29, 1970, Pub. L. 91–358, § 301, title III, 84 Stat. 654.)

EFFECTIVE DATE OF SECTIONS 2–2221 TO 2228 AND REPEAL OF SECTIONS 2–2201 TO 2–2210—REFERENCE TO SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

Section 901(b)(1) of Pub. L. 91–358, provided: (b)(1) Title III [Secs. 2–2221 to 2–2228 and repeal of secs. 2–2201 to 2–2210] shall take effect on the date of the enactment of this Act [July 29, 1970]. In the administration of section 303(b) [2–2223(b)] of title III during the period beginning on the date of the enactment of this Act and ending on the effective date specified in subsection (a), [See note prec. 11–101] the reference to the Superior Court of the District of Columbia shall be considered a reference to the District of Columbia Court of General Sessions.

§ 2–2222. Functions and authority of Service—Persons who may be represented—Use of private attorneys—Determination of financial capability of applicant—False information—Penalty.

(a) The Service is authorized to represent any person in the District of Columbia who is a person described in any of the following categories and who is financially unable to obtain adequate representation:

(1) Persons charged with an offense punishable by imprisonment for a term of six months, or more.

(2) Persons charged with violating a condition of probation or parole.

(3) Persons subject to proceedings pursuant to chapter 5 of title 21 (Hospitalization of the Mentally Ill).

(4) Persons for whom civil commitment is sought pursuant to title III of the Narcotic Addict Rehabilitation Act of 1966 (42 U.S.C. 3411, et seq.) or the provisions of sections 24–601 to 24–611.

(5) Juveniles alleged to be delinquent or in need of supervision.

(6) Persons subject to proceedings pursuant to section 24–527) (relating to commitment of chronic alcoholics by court order for treatment).

(7) Persons subject to proceedings pursuant to section 24–301 (relating to confinement of persons acquitted on the ground of insanity).

Representation may be furnished at any stage of a proceeding, including appellate, ancillary, and collateral proceedings. Not more than 60 per centum of the persons who are annually determined to be financially unable to obtain adequate representation and who are persons described in the above categories may be represented by the Service, but the Service may furnish technical and other assistance to private attorneys appointed to represent persons described in the above categories. The Service shall determine the best practicable allocation of its staff personnel to the courts where it furnishes representation.

(b) The Service shall establish and coordinate the operation of an effective and adequate system for appointment of private attorneys to represent persons described in subsection (a), but the courts shall have final authority to make such appointments. The Service shall report to the courts at least quarterly on matters relating to the operation of the appointment system and shall consult with the courts on the need for modifications and improvements.

(c) Upon approval of its Board of Trustees, the Service may perform such other functions as are

necessary and appropriate to the duties described above.

(d) The determination whether a person is financially unable to obtain adequate representation shall be based on information provided by the person to be represented and such other persons or agencies as the court in its discretion shall require. Whoever in providing this information knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statement or representation, or makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry shall be fined not more than $1,000 or imprisoned not more than one year, or both. (July 29, 1970, Pub. L. 91–358, § 302, title III 84 Stat. 654.)

EFFECTIVE DATE

See note to section 2–2221.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also notes to decisions under former § 2–2202.]

Right to counsel

Where indigent defendant was not warned of his right to have counsel appointed for him at hearing before United States Commissioner after arrest, although counsel could possibly have lessened or prevented defendant's spending 2½ months in county jail and could have helped him maintain his plea of not guilty, and defendant appeared before court for arraignment after he had assured United States attorney that he would plead guilty, defendant was denied right to counsel and was entitled to have sentence vacated and new trial granted or, in absence of hearing within 90 days, to be discharged. *G. L. Stanley* v. *United States* (1968, 288 F. Supp. 666).

§ 2–2223. Board of Trustees—Appointment—Members—Powers—Term of office—Vacancies—Legal Aid Society Trustees to continue in office—Trustees deemed employees of District for purpose of suit.

(a) The powers of the Service shall be vested in a Board of Trustees composed of seven members. The Board of Trustees shall establish general policy for the Service but shall not direct the conduct of particular cases.

(b) (1) Members of the Board of Trustees shall be appointed by a panel consisting of—

(A) the chief judge of the United States Court of Appeals for the District of Columbia Circuit;

(B) the chief judge of the United States District Court for the District of Columbia;

(C) the chief judge of the District of Columbia Court of Appeals;

(D) the chief judge of the Superior Court of the District of Columbia; and

(E) the Commissioner of the District of Columbia.

The panel shall be presided over by the chief judge of the United States Court of Appeals for the District of Columbia Circuit (or in his absence, the designee of such judge). A quorum of the panel shall be four members.

(2) Judges of the United States courts in the District of Columbia and of District of Columbia courts may not be appointed to serve as members of the Board of Trustees.

(3) The term of office of a member of the Board of Trustees shall be three years. No person shall serve more than two consecutive terms as a member of the Board of Trustees. A vacancy in the Board of Trustees shall be filled in the same manner as the original appointment. Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term.

(c) The trustees of the Legal Aid Agency for the District of Columbia in office on the date of enactment of this Act shall serve the unexpired portions of their terms as trustees of the Service.

(d) For the purposes of any action brought against the trustees of the Service, they shall be deemed to be employees of the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 303, title III 84 Stat. 655.)

REFERENCE IN TEXT

"This Act", referred to in subsec. (c), means the District of Columbia Court Reform and Criminal Procedure Act of 1970, approved July 29, 1970, Pub. L. 91–358.

EFFECTIVE DATE

See note to section 2–2221.

§ 2–2224. Director and Deputy Director—Duties—Salaries.

The Board of Trustees shall appoint a Director and Deputy Director of the Service, each of whom shall serve at the pleasure of the Board. The Director shall be responsible for the supervision of the work of the Service and shall perform such other duties as the Board of Trustees may prescribe. The Deputy Director shall assist the Director and shall perform such duties as he may prescribe. The Director and Deputy Director shall be members of the bar of the District of Columbia. The Board of Trustees shall fix the compensation to be paid to the Director and the Deputy Director without regard to chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code, but compensation for the Director shall not exceed the rate prescribed for GS–18 of the General Schedule and compensation for the Deputy Director shall not exceed the maximum rate prescribed for GS–17 of the General Schedule. (July 29, 1970, Pub. L. 91–358, § 304, title III 84 Stat. 656.)

EFFECTIVE DATE

See note to section 2–2221.

§ 2–2225. Employment of attorneys and other personnel—Compensation—Private practice by attorneys not permitted.

(a) The Director shall employ a staff of attorneys and clerical and other personnel necessary to provide adequate and effective defense services. The Director shall make assignments of the personnel of the Service. The compensation of all employees of the Service, other than the Director and the Deputy Director, shall be fixed by the Director without regard to chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code, but shall not exceed the compensation which may be paid to persons of similiar qualifications and experience in the Office of the United States Attorney for the District of Columbia. All attorneys employed by the Service to represent persons shall be members of the bar of the District of Columbia.

(b) No attorney employed by the Service shall engage in the private practice of law or receive a fee for representing any person. (July 29, 1970, Pub. L. 91–358, § 305, title III 84 Stat. 656.)

EFFECTIVE DATE

See note to section 2–2221.

§ 2–2226. Reports by Board of Trustees—Annual audits by certified public accountants.

(a) The Board of Trustees of the Agency[1] shall submit a fiscal year report of the Service's operations to the Congress of the United States, to the chief judges of the Federal courts in the District of Columbia and of the District of Columbia courts, and to the Commissioner of the District of Columbia. The report shall include a statement of the financial condition of the Service and a summary of services performed during the year.

(b) The Board of Trustees shall annually arrange for an independent audit to be prepared by a certified public accountant or by a designee of the Administrative Office of the United States Courts. (July 29, 1970, Pub. L. 91–358, § 306, title III 84 Stat. 657.)

EFFECTIVE DATE

See note to section 2–2221.

§ 2–2227. Appropriations—Grants and contributions.

(a) For the purpose of carrying out the provisions of this chapter, there are authorized to be appropriated for each fiscal year, out of any moneys in the Treasury to the credit of the District of Columbia, such sums as may be necessary to implement the purposes of this chapter. Such sums shall be appropriated for the judiciary to be disbursed by the Administrative Office of the United States Courts to carry on the business of the Service. The Administrative Office, in disbursing and accounting for such sums, shall follow, so far as possible, its standard fiscal practices. The budget estimates for the Service shall be prepared in consultation with the Commissioner of the District of Columbia.

(b) Upon approval of the Board of Trustees, the Service may accept public grants and private contributions made to assist it in carrying out the provisions of this chapter. (July 29, 1970, Pub. L. 91–358, § 307, title III, 84 Stat. 657.)

EFFECTIVE DATE

See note to section 2–2221.

§ 2–2228. Transition provisions.

All employees of the Legal Aid Agency for the District of Columbia on the date of enactment of this Act shall be deemed to be employees of the Service and shall be entitled to the same compensation and benefits as they are entitled to as employees of the Legal Aid Agency for the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 308, title III, 84 Stat. 657.)

REFERENCE IN TEXT

"This Act", referred to in text, means the District of Columbia Court Reform and Criminal Procedure Act of 1970, approved July 29, 1970, Pub. L. 91–358.

EFFECTIVE DATE

See note to section 2–2221.

Chapter 23.—BONDING OF HOME IMPROVEMENT BUSINESS

§ 2–2301. Bonding of persons engaged in home improvement business—Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

[1] So in original. Probably should be Service.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(78) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to the bonding provisions, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–2302. Commissioners may establish classes and subclasses of persons licensed in the home improvement business—Bonds for the protection of the public—Licensees may be required to carry public liability and property damage insurance—Designation of Commissioners by licensees as their attorney for service of process—Terms and conditions of bonds—Aggrieved person may sue on the bond.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(79 and 80) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) up to and including clause 2 of subsection (a) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 2–2305. Prosecutions to be conducted by Corporation Counsel.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 2–2306. Supplemental authority of Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 24.—SECURITY AGENTS AND BROKERS

§ 2–2410. Investigations and subpenas.

* * * * *

(c) In case of contumacy by, or refusal to obey a subpena issued to any person, the Superior Court of the District of Columbia, upon application by the Commission with the approval of the United States Attorney for the District of Columbia, may issue an order compelling such person to appear before the Commission, or the officer designated by it, there to produce documentary evidence if so ordered or to give evidence touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 155(c)(11)(A), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(11)(A) of Act July 29, 1970, Public Law 91–358, amended subsec. (c) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 2–2411. Injunctions.

Whenever it shall appear to the Commission that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order hereunder, it may in its discretion bring an action in the Superior Court of the District of Columbia to enjoin the acts or practices and to enforce compliance with this chapter or any rule or order hereunder. Upon a proper showing a permanent or temporary injunction, restraining order, or writ of mandamus shall be granted and a receiver or conservator may be appointed for the defendant or the defendant's assets. The court may not require the Commission to post a bond. (Aug. 30, 1964, 78 Stat. 629, Pub. L. 88–503, § 12; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(11)(B), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(11)(B) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 2–2415. Administration of chapter.

REFERENCE IN TEXT

The position of "Postmaster General of the United States", referred to in subsection (m), was abolished and the functions, powers, and duties thereof transferred to the United States Postal Service by section 4(a) of Act Aug. 12, 1970, Pub. L. 91–375, 84 Stat. 773.

§ 2–2416. Advisory committee.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TITLE 3.—BOARD OF PUBLIC WELFARE

Chapter 1.—BOARD OF PUBLIC WELFARE

Sec.
3–120. Commitments by Family Division of Superior Court.

§ 3–103. Composition of board—Term of office—Eligibility of members—Removal—Service without compensation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 3–105. Director of Public Welfare—Appointment and duties—Qualifications—Other employees—Compensation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 3–107. Supervision of personnel of institutions—Appointment and discharge of personnel.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 3–108. Regulation of admissions to, and administration of institutions.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(81) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to the admission of persons to institutions, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 3–112. Plans for new institutions to be submitted to board—Investigation of institutions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 3–115. Contracts for care of dependent children.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 3–116. Children over whom Board shall have supervision.

Said Board of Public Welfare shall have the care and supervision of the following classes of children: First. All children committed under section 32–209. Second. All children who are destitute of suitable homes and adequate means of earning an honest living, all children abandoned by their parents or guardians, all children of habitually drunken or vicious or unfit parents, all children habitually begging on the streets or from door to door, all children kept in vicious or immoral associations, all children known by their language or life to be vicious or incorrigible whenever such children may be committed to the care of the board by the Family Division of the Superior Court: *Provided,* That the laws regulating the commitment of children to the training schools of the District shall not be deemed to be repealed in any part by this section. Third. Such children as the board of trustees of the National Training School for Boys may, in their discretion, commit to the Board of Public Welfare, and power is hereby given the board of trustees of the said school to commit any inmate thereof to the said Board of Public Welfare, conditionally upon the good behavior of the child so committed. Fourth. Under the rules to be established by the board children may be received and temporarily cared for pending investigation or judgment of the court. (July 26, 1892, 27 Stat. 269, ch. 250, § 4; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; May 27, 1908, 35 Stat. 380, ch. 200; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11; July 29, 1970, Pub. L. 91–358, title I, § 159(b), 84 Stat. 577.)

AMENDMENT

1970—Section 159(b) of Act July 29, 1970, Public Law 91–358 amended section by striking out "police court or the criminal court of the District" and inserting in lieu thereof "Family Division of the Superior Court."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(82) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to the establishment of rules for receiving and temporarily caring for children, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 3–117. Board to care for dependent and neglected children—Children to be placed in private families—Adoption.

NOTES TO DECISIONS

Guardian ad litem

Refusal to appoint guardian ad litem for infant adoptee in adoption proceeding was not error where all essential facts concerning the child's welfare were presented by prospective adopters and by department of public welfare which appeared as adoptee's legal guardian. *In re Adoption of a Female Infant* (D.C. App. 1968, 237 A. 2d 468).

§ 3–120. Commitments by Family Division of Superior Court.

The judges of the Family Division of the Superior Court of the District of Columbia are hereby authorized and empowered, at their discretion, to commit to the custody and care of the Board of Public Welfare of the District of Columbia children under seventeen years of age who shall be convicted of petty crimes or misdemeanors which may be punishable with fine or imprisonment; and said Board of Public

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Welfare shall place, under contract, such children in such suitable homes, institutions, or training schools for the care of children as it may deem wise and proper. (Mar. 3, 1901, 31 Stat. 1095, ch. 847, § 1; Mar. 19, 1906, 34 Stat. 73, ch. 960, § 8; Mar. 16, 1926, 44 Stat. 210, ch. 58, § 11; July 29, 1970, Pub. L. 91–358, title I, § 159(c), 84 Stat. 577.)

AMENDMENT

1970—Section 159(c) of Act July 29, 1970, Public Law 91–358 amended section by striking out "criminal and police courts" and inserting in lieu thereof "Family Division of the Superior Court."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 3–121. Children under 17 years not to be committed to jail, workhouse, or police station.

CROSS REFERENCE

Federal Youth Corrections Act, applicability to the District, see 18 U.S.C. 5024, 5025.

§ 3–123. Annual budgets—Report of activities—Studies of social conditions—Children to be placed with regard to religious faith of parents—Record if placed elsewhere—Religious freedom.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 2.—PUBLIC ASSISTANCE

§ 3–201. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 3–202. Categories and administrations of public assistance.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(83) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (b)(2) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

NOTES TO DECISIONS

Aid to families with dependent children

Both need and deprivation must be shown when a child seeks to qualify for assistance payments under the District of Columbia's AFDC program. *M. E. Trull* v. *District of Columbia Department of Public Welfare* (D.C. App. 1970, 268 A. 2d 859).

Children of father, who was living at home and who was able-bodied and employable, are not qualified to receive assistance payments as "dependent" children under AFDC program, despite father's failure and refusal to work and support family. *Id.*

Fact that assistance payments under the District's AFDC program are not provided to a child when unemployed parent refuses to accept employment without good cause does not serve to establish that the District of Columbia has failed to implement its assistance program pursuant to Social Security Act providing for aid to dependent children of unemployed fathers under certain specified conditions. *Id.*

In establishing the standard of need and determining level of benefits to be paid to a mother receiving public assistance under Aid to Families with Dependent Children, Congress has left to the States a great deal of discretion. *C. Daniels* v. *W. G. Thompson, Director etc.* (D.C. App. 1970, 269 A. 2d 437).

States' or District of Columbia's discretion, in establishing the standard of need and determining level of benefits to be paid to mothers receiving public assistance under Aid to Families with Dependent Children, is limited to fixing an amount needed by variously composed recipient units and to determining how much the State or District of Columbia is able to pay; thus, at least in its role of determining standard of need and level of benefits, a determination of what income is to be regarded and what disregarded as a resource available to the recipient unit is not within the District's discretion. *Id.*

To the extent Congress has dictated terms and conditions of AFDC payments, the District of Columbia is required to administer the program accordingly. *Id.*

Under the Social Security Act and the District of Columbia regulations promulgated thereunder, a 17-year-old mother, who is a full time student in high school and also employed in a "stay-in-school" program, is not entitled to have all of her income disregarded in determining amount of benefits to which she and her son were entitled under Aid to Families with Dependent Children, but rather is entitled to have first $30 of her income and one-third of the remainder disregarded. *Id.*

Validity of regulation

"Substitute parent" section of "Handbook of Public Assistance Policies and Procedures" promulgated by the Welfare Department was in fact a regulation but, not having been adopted by the Commissioners in manner prescribed by section 3–202, was invalidly promulgated; further, said regulation was inconsistent with the Social Security Act; however, it was not necessary or appropriate to grant extraordinary injunctive relief against the District of Columbia Department of Welfare, since the Department had ceased applying that regulation and was otherwise presently administering the "Aid to Families with Dependent Children" program within scope and spirit of King v. Smith decision of United States Supreme Court. *I. Robinson et al.* v. *W. E. Washington et al.* (1968, 302 F. Supp. 842).

§ 3–203. Eligibility for public assistance.

NOTES TO DECISIONS

Administrators discretion with regard to one-year residence requirement

District of Columbia Public Assistance Act did not grant administrators a discretion to disregard one-year residence requirements. *M. Harrell et al.* v. *W. N. Tobriner et al.* (1967, 279 F. Supp. 22; aff'd 89 S. Ct. 1322, 394 U.S. 618).

Consistent and reasonable interpretation by those charged with duty of administering District of Columbia Public Assistance Act was entitled to great weight. *Id.*

Under District of Columbia Public Assistance Act, "public assistance shall be awarded" to those who meet the one-year conditions meant that assistance was not to be granted unless those conditions were met. *Id.*

Congressional discretion

One-year residence requirement as a requisite for receipt of public assistance was within discretion of Congress. *M. Harrell et al.* v. *The Board of Commissioners etc.* (1967, 269 F. Supp. 919).

Constitutionality

Inasmuch as statutory classification which denied welfare assistance to individuals who had not resided in state for one year immediately preceding application touched on fundamental right of interstate movement, its constitutionality was required to be judged by standard of whether it promoted a compelling state interest, and not by traditional standard of whether it was without any reasonable basis. *W. E. Washington et al.* v. *C. M. Legrant et al.* (1969, 89 S. Ct. 1322, 394 U.S. 618; aff'g 279 F. Supp. 22).

A substantial constitutional question was not raised by contention that one-year residence requirement for public welfare is unconstitutional. *M. Harrell et al.* v. *The Board of Commissioners, etc.* (1967, 269 F. Supp. 919).

One-year prior residence condition for public assistance was invalid classification in denial of equal protection as being without reasonable relation to purposes of legislation. *M. Harrell et al.* v. *W. N. Tobriner et al.* (1967, 279 F. Supp. 22; aff'd 89 S Ct. 1322, 394 U.S. 618).

Invalidation of one-year prior residence condition for public assistance could not invalidate whole public assistance program. *Id.*

Due process

Due process clause of Fifth Amendment forbids Congress from denying public assistance to poor persons who are otherwise eligible solely on the ground that they have not been residents of the District of Columbia for one year at time their applications were filed. *W. E. Washington et al.* v. *C. M. Legrant et al.* (1969, 89 S. Ct. 1322, 394 U.S. 618; aff'g 279 F. Supp. 22).

Equal protection of the laws

Statute denying welfare benefits to residents of less than a year creates a classification which constitutes an invidious discrimination denying them equal protection of the laws. *W. E. Washington et al.* v. *C. M. Legrant et al.* (1969, 89 S. Ct. 1322, 394 U.S. 618; aff'g 279 F. Supp. 22).

Justification for statutory classification

Statute which denied welfare assistance to individuals who had not resided in state for one year immediately preceding application could not be justified as a permissible state attempt to discourage those indigents who would enter state solely to obtain larger benefits. *W. E. Washington et al.* v. *C. M. Legrant et al.* (1969, 89 S. Ct. 1322, 394 U.S. 618; aff'g 279 F. Supp. 22).

Statute which denied welfare assistance to individuals who had not resided in state for one year immediately preceding application could not be sustained as an attempt to distinguish between new and old residents on basis of contribution they had made to community through payment of taxes. *Id.*

Evidence of a rational relationship between one-year residency requirement for receiving welfare assistance and state objectives of facilitating planning of welfare budget, of providing objective test of residency, of minimizing opportunity for recipients fraudulently to receive payments for more than one jurisdiction, and of encouraging reentry of new residents into labor force would not suffice to justify classification. *Id.*

One-year residency requirement

One-year residency requirement was not justified on ground that it facilitated planning of welfare budget. *W. E. Washington et al.* v. *C. M. Legrant et al.* (1969, 89 S. Ct. 1322, 394 U.S. 618; aff'g 279 F. Supp. 22).

One-year residency requirement was not justified on ground that it provided objective test of residency. *Id.*

One-year residency requirement was not justified on ground that it minimized opportunity for recipients fraudulently to receive payments from more than one jurisdiction. *Id.*

One-year residency requirement was not justified on ground that it encouraged early entry of new residents into labor force. *Id.*

Reasonableness of one-year residence requirement

One-year prior residence condition for public assistance could not be said to be reasonable on theory that it was designed to protect jurisdiction from an influx of persons seeking more generous public assistance than might be available elsewhere, even if some citizens did enter jurisdiction in order to obtain greater welfare aid. *M. Harrell et al.* v. *W. N. Tobriner et al.* (1967, 279 F. Supp. 22; aff'd 89 S. Ct. 1322, 394 U.S. 618).

Even assuming that a one-year prior residence condition for public assistance was valid as a provision to prevent abuse of public assistance, case of abuse was not established where challenged provisions swept before it all who had less than the required residence, including bona fide residents who had come to jurisdiction for reasons disassociated entirely from a desire to obtain relief. *Id.*

Right to public assistance

Statutes denying welfare assistance to persons who did not reside within district for at least one year could not be saved from constitutional infirmity on ground that public assistance benefits are a privilege and not a right. *W. E. Washington et al.* v. *C. M. Legrant et al.* (1969, 89 S. Ct. 1322, 394 U.S. 618; aff'g 279 F. Supp. 22).

§ 3–204. Amount of public assistance.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(84) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 3–205. Application for public assistance.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(85) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 3–206. Investigation of applicant.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 3–207. Award and payment of public assistance.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 3–208. Recipient incapacitated.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 3–209. Emergency public assistance.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 3–210. Redetermination of grants.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 3–211. Records.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(86) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) relating to the custody, use, and preservation of records, papers and files, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 3–212. Penalties.

Any person violating subsection (b) of section 3–211 shall be punished by a fine of not more than

$500, or by imprisonment of not more than ninety days, or by both such fine and imprisonment. Prosecutions for such violations and for violations of section 3–216(a) shall be brought to the Superior Court of the District of Columbia by the Corporation Counsel or any of his assistants. (Oct. 15, 1962, 76 Stat. 917, Pub. L. 87–807, § 13; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 3–213. Funeral expenses.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(87) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 3–214. Hearings.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(88) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to hearings, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

NOTES TO DECISIONS

Declaratory and injunctive relief

In an action seeking declaratory and injunctive relief, the United States District Court for the District of Columbia properly declined jurisdiction of suit by mothers receiving assistance under District of Columbia Aid to Families with Dependent Children program against Board of Commissioners of the District of Columbia and other officials having responsibilities with regard to the program with respect to administration of program because mothers, prior to invoking aid of District Court, did not pursue avenues of administrative relief open to them. *P. A. Smith* v. *Board of Commissioners of the District of Columbia* (1967, 380 F. 2d 632, 127 U.S. App. D.C. 85).

§ 3–216. Fraud in obtaining public assistance—Repayment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3–212.

§ 3–217. Property—District's claim against estate of recipient.

* * * * *

(b) In addition to the remedy provided by subsection (a) of this section, or by any other provision of law, the Commissioners may file a notice in the office of the Recorder of Deeds in any case where public assistance in the form of old-age assistance or aid to the disabled is granted to any person under this chapter, and such notice shall constitute and have the effect of a lien in favor of the District against the real and personal property of such person for the amount of such public assistance which theretofore has been granted or which may thereafter be granted to, or on behalf of, such persons. Any such lien may be enforced by a proceeding filed in the Superior Court of the District of Columbia. The Commissioners shall file in the office of the Recorder of Deeds a release of any such real and personal property from the effect of such lien whenever there has been repaid to the District the amount of the public assistance theretofore granted to, or on behalf of, such person. The Commissioners are also authorized to release any such lien when in their judgment they deem it appropriate to do so. Such notices and releases may be filed without payment of fees.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 155(c)(12), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(12) of Act July 29, 1970, Public Law 91–358, amended subsec. (b) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 3–218. Responsible relatives.

(a) Responsible relatives for any applicant or recipient of public assistance shall be limited to spouse for spouse and parent for a child under the age of twenty-one, and their financial responsibility shall be based upon their ability to pay. Any such applicant or recipient of public assistance or person in need thereof, or the Commissioner of the District of Columbia, may bring an action to require such financially responsible spouse or parent to provide such support, and the court shall have the power to make orders requiring such spouse or parent to pay such eligible applicant or recipient of public assistance such sum or sums of money in such installments as the court in its discretion may direct, and such orders may be enforced in the same manner as orders for alimony.

(b) The Commissioner is authorized on behalf of the District to sue such spouse or parent for the amount of public assistance granted to such recipient under this chapter or under any Act repealed by this chapter, or for so much thereof as such spouse or parent is reasonably able to pay.

(c) All suits, actions, and court proceedings under this section shall be brought in the Domestic Relations Branch of the District of Columbia Court of General Sessions, or in that court division which may subsequently exercise the jurisdiction exercised by the Domestic Relations Branch on the effective date of this Act. To the extent applicable, suits, ac-

tions, and proceedings brought pursuant to this section shall be governed by the provisions of the Act approved April 11, 1956 (70 Stat. 111), as such Act may from time to time be amended or superseded. (Oct. 15, 1962, 76 Stat. 918, Pub. L. 87–807, § 19; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 165(c), 84 Stat. 586; Dec. 7, 1970, Pub. L. 91–531, 84 Stat. 1391.)

REFERENCES IN TEXT

The words "the effective date of this Act" appearing in subsec. (c) would seem to refer to the date of the amendatory Act (Pub. L. 91–531, Dec. 7, 1970) rather than to the effective date of the District of Columbia Public Assistance Act of 1962.

The Act of April 11, 1956 (70 Stat. 111), referred to in subsec. (c), was originally classified to §§ 11–758 to 11–770. That Act was later repealed by § 21 of the Act of Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 620, and replaced by §§ 11–741, 11–1101 to 11–1103, 11–1121, 11–1122, 11–1141, 11–1161, 13–101, 13–301, 13–302, 15–132, 15–710, 17–302, 17–305 to 17–307. A majority of these sections were either amended or superseded by the amendments of titles 11, 13, 15, and 17 made by the District of Columbia Court Reorganization Act of 1970 (Title I of Pub. L. 91–358).

CODIFICATION

Section 165(c) of Act July 29, 1970, Pub. L. 91–358, repealed subsec. (c) of section 19 of the District of Columbia Public Assistance Act of 1962 (D.C. Code, § 3–218), effective Feb. 1, 1971. Subsequent to enactment of Pub. L. 91–358, the Act of Dec. 7, 1970, Pub. L. 91–531, amended section 19 of the District of Columbia Public Assistance Act (which included a subsec. (c)) to read as above set out.

AMENDMENTS

1970—Act Dec. 7, 1970, Pub. L. 91–531, amended section to read as above set out. For provisions of section before this amendment, see the 1967 edition of the code.

Section 165(c) of Act July 29, 1970, Pub. L. 91–358, repealed subsection (c) which related to court proceedings to enforce support.

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Constitutionality

The Uniform Reciprocal Enforcement of Support Act, section 30–301 et seq., requiring husband, wife, father, mother, or adult child of recipient of public assistance to be responsible, according to his ability to pay, for support of such recipient, does not deny due process. *C. Groover* v. *Essex County Welfare Board* (D.C. App. 1970, 264 A. 2d 143).

Fact that county welfare board sought to collect support for mother only from one son under Uniform Act requiring husband, wife, father, mother, or adult child of recipient of public assistance to be responsible according to his ability to pay, for support of such recipient, and not from other children, who live in other jurisdictions, and who are allegedly able to contribute, does not render application of such chapter to son a deniel of equal protection. *Id.*

Support and education of adult child

A father is not legally required to support and educate an adult child, except as specified by statute when the child is in need of public assistance or is hospitalized because of mental illness. *W. T. Spence* v. *F. A. Spence* (D.C. App. 1970, 266 A. 2d 29).

Survival of action against relatives for support

Where 84-year-old widow invoked the District of Columbia Public Assistance Act of 1962 against her eldest daughter, and the District of Columbia Court of General Sessions denied recovery, and, pending appeal to District of Columbia Court of Appeals, widow died, and her daughter moved for dismissal for mootness against substituted executor, District of Columbia Survival Act did not require abatement, and it was error to grant motion for dismissal for mootness. *J. M. Stone, Executor etc.* v. *A. W. Brewster* (1968, 399 F. 2d 554, 130 U.S. App. D.C. 183).

The District of Columbia Survival Act was enacted for purpose of abrogating, in part at least, the harsh rule of the common law on the subject of survival, but its terms apply to any case in which a right of action has accrued prior to death, with certain limitation in tort cases. *Id.*

§ 3–220. Delegation of authority.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Validity of regulation

"Substitute parent" section of "Handbook of Public Assistance Policies and Procedures" promulgated by the Welfare Department was in fact a regulation but, not having been adopted by the Commissioners in manner prescribed by section 3–202, was invalidly promulgated; further, said regulation was inconsistent with the Social Security Act; however, it was not necessary or appropriate to grant extraordinary injunctive relief against the District of Columbia Department of Welfare, since the Department had ceased applying that regulation and was otherwise presently administering the "Aid to Families with Dependent Children" program within scope and spirit of King v. Smith decision of United States Supreme Court. *I. Robinson et al.* v. *W. E. Washington et al.* (1968, 302 F. Supp. 842).

§ 3–221. Voluntary services.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 3–222. Appropriations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TITLE 4.—POLICE AND FIRE DEPARTMENTS

Chapter 1.—METROPOLITAN POLICE

Sec.
4–130a. Police uniforms to display U.S. flag emblem—Regulations.
4–140a. Investigative arrests—Maximum period for questioning—Admissibility of confessions.
4–143a. Legal assistance for police in wrongful arrest cases.
4–150a. False or fictitious reports to Metropolitan Police—Penalty.

§ 4–102. Police districts and precincts to be established by commissioners.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(89) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 4–103. Appointments—Civil service rules made applicable—Classification.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–104. Oath of office.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–105. Service during probationary period—Discharge for unsatisfactory service—Retention equivalent to permanent appointment.

No person shall receive a permanent appointment who has not served the required probationary period, but the service during probation shall be deemed to be service in the uniformed force if succeeded by a permanent appointment, and as such shall be included and counted in determining eligibility for advancement, promotion, retirement, and pension in accordance with existing law. If at any time during the period of probation, the conduct or capacity of the probationer is determined by the Commissioner of the District of Columbia, or his designated agent, to be unsatisfactory, the probationer shall be separated from the service after advance written notification of the reasons for and the effective date of the separation. The retention of the probationer in the service after satisfactory completion of the probationary period shall be equivalent to a permanent appointment therein. (Aug. 31, 1918, 40 Stat. 938, ch. 164; May 27, 1968, Pub. L. 90–320, § 6, 82 Stat. 145.)

AMENDMENT

1968—Section 6 of act May 27, 1968, Pub. L. 90–320, amended section to read as above set out. The amendment authorizes the termination of the employee's services at any time during the probationary period if services are found to be unsatisfactory, after advance written notification of the reasons for and the effective date of the separation.

EFFECTIVE DATE OF PUB. L. 90–320

Section 9 of act May 27, 1968, provided:

"(a) Except as provided in subsection (b) of the first section (amendment of sec. 4–823) and in subsection (b) of this section (amendment of sec. 4–105), the effective date of this Act (amending secs. 4–105, 4–823, 4–832(a); enacting secs. 4–823d–2, and secs. 4, 5, 7 and 8 of this Act set out as notes to sec. 4–823) shall be the first day of the first pay period beginning on or after October 1, 1967.

"(b) The effective date of the amendment made by section 6 of this Act (4–105) shall be the date of the enactment of this Act." [May 27, 1968]

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–106. Classification of officers and privates of police department—Duties of each.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–106a. Assistant to inspector commanding detective bureau—Rank and pay—Chief of detectives—Rank and pay.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–107. Age limits on original appointments.

The Commissioners of the District of Columbia are authorized to determine and fix the minimum and maximum limits of age within which original appointments to the Metropolitan police department may be made. (Jan. 24, 1920, 41 Stat. 398, ch. 54 § 4.)

CODIFICATION

This section is set out in this supplement to correct a typographical error of omission by inserting the words "and maximum" and the word "minimum" so as to conform to the Statutes at Large.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(90) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

CROSS REFERENCES

Age limits on original appointments to fire department, see § 4–403.

§ 4–108a. Allowance for use of private motor vehicles by inspectors.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–110. Detail of privates for detective work.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–112. Crossing policemen—Detail—Penalty for failure to stop cars.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–115. Special policemen—Appointment and compensation.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(91) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to regulations regarding special policemen, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

NOTES TO DECISIONS

Arrest powers of special officer

A special officer commissioned under this section, as a citizen, had authority to arrest defendant and codefendant where he saw them take at least three sport coats and, from his general knowledge and particularly as employee of the department store, he must have known that such coats would cost about $35 apiece so that defendant was stealing more than $100 worth of merchandise. Moreover, a citizen, need not make a rapid-fire calculation of the value of the merchandise in arresting a shoplifter. *T. Gaither and C. Tatum* v. *United States* (1969, 413 F. 2d 1061, 134 U.S. App. D.C. 154).

§ 4–116. Police matrons—Appointments.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–117. Duties of police matrons.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(92) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 4–119. Duties of Board of Commissioners as head of police department.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Mandamus

Without a full record of the trial, even if petitioner was constitutionally entitled to further protection of his rights during hospital staff conference held in connection with a pre-indictment mental examination requested by petitioner, it could not be said that presence of petitioner's counsel, as opposed to some alternative device such as recording some or all parts of conference, was an appropriate remedy, so that mandamus to compel an order against hospital to permit presence of petitioner's counsel was not available. *R. N. Thornton* v. *Hon. H. F. Corcoran* (1969, 407 F. 2d 695, 132 U.S. App. D.C. 232).

§ 4–121. Rules and regulations—Fine, suspension, or dismissal of police—Charges to be heard by trial board.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(93) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to rules and regulations for the proper government, conduct, discipline, and good name of the police force and fixing penalties, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

NOTES TO DECISIONS

Administrative due process

Where it was arguable whether administrative officials of District of Columbia charged with determining suspended policeman's right to recover back pay had failed to exercise discretionary power vested in them by statute and it was also arguable whether, even if they did exercise their authority, they did so in such a way as to deprive him of administrative due process, court could not presume that policeman had right to be paid during period of his suspension and appropriate remedy was not a money judgment. *H. K. Guyton* v. *The District of Columbia, etc.* (D.C. App. 1968, 245 A. 2d 638).

§ 4–122. Trial board—Appointment—Hearings—Findings—Appeals—Existing rules and regulations ratified.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402 (94 and 95) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to rules of procedure before trial boards, and changing, altering, amending, or abolishing rules and regulations of the police force under the last proviso of this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 4–123. Commissioners and major and superintendent of police may administer oaths.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–124. Police surgeons—Qualifications—Duties.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–125. Affiliation with organizations advocating strikes, prohibited—Penalties—Conspiracy to interfere with operation of police force—Right of resignation restricted.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–127. Major and superintendent to make quarterly reports.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–129. Rewards, presents, fee, or emoluments to police officers—Notice to commissioners—Penalty for failure to give notice.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–130. Clothing to be uniform.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(96) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to rules for uniform clothing, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 4–130a. Police uniforms to display U.S. flag emblem—Regulations.

(a) The uniform of officers and members of the United States Park Police force, the Executive Protective Service, the Capitol Police, and the Metropolitan Police force of the District of Columbia shall bear a distinctive patch, pin, or other emblem depicting the flag of the United States or the colors thereof.

(b) The Secretary of the Interior in the case of the United States Park Police force, the Secretary of the Treasury in the case of the Executive Protective Service, the Capitol Police Board in the case of the Capitol Police, and the Commissioner of the District of Columbia in the case of the Metropolitan Police force shall prescribe such regulations as may be necessary to carry out the purposes of this section.

(c) This section shall take effect one hundred and eighty days after June 30, 1970. (June 30, 1970, Pub. L. 91–297, title II, § 201, 84 Stat. 357.)

CODIFICATION

In subsec. (c), the words "the date of enactment of this title", referring to title II of Pub. L. 91–297, were changed to "June 30, 1970".

§ 4–131. Appropriations for clothing.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–132a. Residence requirements of members of Police Force and Fire Department.

(a) Except as otherwise provided in subsection (b) of this section, there shall be no limitation or restriction of place of residence of any officer or member of the Metropolitan Police force, or of the Fire Department of the District of Columbia other than residence within the Washington, District of Columbia, metropolitan district. For the purposes of this section and section 4–409a, "Washington, District of Columbia, metropolitan district" shall be held to include the District of Columbia and the territory adjacent thereto within a radius of twenty-five miles from the United States Capitol Building. Any officer or member of the Metropolitan Police force or the Fire Department of the District of Columbia living outside of the District of Columbia shall have and maintain a telephone at all times in his residence.

(b) For the purpose of this section and section 4–409a, the Chief of Police of the Metropolitan Police force and the Fire Chief of the Fire Department of the District of Columbia, as the case may be, may in individual cases waive the requirement that an officer or member reside within the Washington, District of Columbia, metropolitan district. (July 25, 1956, ch. 726, § 1, 70 Stat. 646; Aug. 30, 1964, Pub. L. 88–517, § 1, 78 Stat. 698; June 30, 1970, Pub. L. 91–297, title II, § 203, 84 Stat. 358.)

AMENDMENTS

1970—Subsec. (a). Pub. L. 91–297, § 203, inserted "Except as otherwise provided in subsection (b) of this section," at the beginning of the first sentence; struck out ", except as otherwise provided in subsection (b) of this section," in the second sentence; and substituted "twenty-five" for "twelve".

Subsec. (b). Pub. L. 91–297, § 203, amended subsec. (b) to read as set forth above.

1964—Subsec. (b). Pub. L. 88–517, § 1, substituted "twenty-five" for "twenty".

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(97) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (b) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 4–133. Appointment of special police without pay.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–134. Records—General complaint files—Lost, missing, or stolen property—Personnel records of police.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(98) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (5) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4–135.

NOTES TO DECISIONS

Review by mandamus

On a petition for mandamus, District court's ruling, in criminal case, denying defendant access to certain police records which he claimed were public records, and refusing to appoint private investigator, were not reviewable. *G. E. Ross, Jr.* v. *The Honorable J. J. Sirica, United States District Judge* (1967, 380 F. 2d 557, 127 U.S. App. D.C. 10).

§ 4–134a. Central criminal records.

* * * * *

(b) The Attorney General, the Corporation Counsel, the United States Commissioner for the District, the clerk of the district court, the clerk of the Superior Court of the District of Columbia; and the Director of the Department of Corrections shall furnish the Chief of Police with such information as the Commissioners consider necessary to enable the Metropolitan Police force to carry out this section. (As amended July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

REFERENCE IN TEXT

The Act of Oct. 17, 1968, Pub. L. 90–578, terminated the office of United States commissioner and established in place thereof the office of United States magistrate. The Act became operative in the District of Columbia on June 27, 1969, when two United States magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969. See §§ 401(a) and 402(a)(b) of said Act (28 U.S.C. 631 note).

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (b) by striking out "municipal court" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(99) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) relating to traffic violations and other petty offenses, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 4–134b. Reports by independent police.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–135. Records open to public inspection.

The records to be kept by paragraphs (1), (2), (3), and (4) of section 4–134 shall be open to public inspection when not in actual use and this requirement shall be enforceable by mandatory injunction issued by the Superior Court of the District of Columbia on the application of any person. (R. S., D. C., § 389, June 29, 1953, 67 Stat. 99, ch. 159, title III, § 301(b); Aug. 20, 1954, 68 Stat. 755, ch. 778, § 2; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(13), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(13) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS

Review by mandamus

On a petition for mandamus, District court's ruling, in criminal case, denying defendant access to certain police records which he claimed were public records, and refusing to appoint private investigator, were not reviewable. *G. E. Ross, Jr.* v. *The Honorable J. J. Sirica, United States District Judge* (1967, 380 F. 2d 557, 127 U.S. App. D.C. 10).

§ 4–136. Police to have power of constables.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–137. Preservation and destruction of records.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–139. Discriminating laws not to be enforced.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–140. Repealed. July 29, 1970, Pub. L. 91–358, § 210(b)(1), title II, 84 Stat. 653.

Section was 397 of the Revised Statutes, as amended Dec. 27, 1967, Pub. L. 90–226, § 101 and dealt with arrests without warrant by police officers. See new section 23–581.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

NOTES TO DECISIONS UNDER PRIOR LAW

Arrest without warrant

Although a police officer may make an arrest without a warrant for an offense committed in his presence, and incident thereto make a search for weapons, an arrest may not be used as a subterfuge to search for evidence of a crime. *J. R. West et ano.* v. *United States* (D.C. App. 1969, 249 A. 2d 740).

Police officer may arrest without a warrant, for misdemeanor of destroying private property only when that crime is committed, or attempt is made to commit it, in his presence or view. *S. Smith and W. Jeffries* v. *United States* (D.C. App. 1968, 247 A. 2d 293).

Officer had probable cause to arrest defendant who had been observed tearing up back seat of automobile which he admitted was not his on charge of destroying private property. *Id.*

Probable cause for arrest

Legality of arrest in our jurisprudence hinges on conclusions of probable cause derived from reasonable probabilities, not absence of doubt, which reasonable men may entertain. *United States* v. *R. H. Cumberland* (D.C. App. 1970, 262 A. 2d 341).

A judge or arresting officer need not have evidence before him sufficient to establish guilt beyond a reasonable doubt to find probable cause for arrest. *Id.*

It is enough if the officer in particular circumstances, conditioned by his observations, and information, reasonably could have believed that a crime had been committed by the person to be arrested. *Id.*

A police officer need only have probable cause to believe that a crime has been committed in his presence by the person to be arrested in order to make warrantless arrest. *Id.*

A police officer is not required to anticipate changes in the law when deciding whether to make warrantless arrest. *Id.*

A police officer was required only to reasonably believe that defendant's conduct amounted to a misdemeanor and a breach of the peace or that breach of the peace was threatened or probable and not that it was beyond reasonable doubt that defendant had committed crime in order to make valid warrantless arrest. *Id.*

A police officer in the District of Columbia has the power to make a warrantless arrest of a citizen when he has probable cause to believe that the citizen has committed felony or certain misdemeanors designated by statute, and the classic test for probable cause is whether the officer had knowledge of facts and circumstances which would warrant a prudent man in believing that an offense had been committed. *A. B. Clarke* v. *United States* (D.C. App. 1969, 256 A. 2d 782).

Search and seizure

Since the defendant was permitted to forfeit amount deposited as collateral on a disorderly charge, further detention and search of his wallet was improper, and seizure of stolen check from wallet was unreasonable and prohibited by the Fourth Amendment. *United States* v. *E. Alston* (1967, 311 F. Supp. 296).

§ 4–140a. Investigative arrests—Maximum period for questioning—Admissibility of confessions.

(a) Any person arrested in the District of Columbia may be questioned with respect to any matter for a period not to exceed three hours immediately following his arrest. Such person shall be advised of and accorded his rights under applicable law respecting any such interrogation. In the case of any such arrested person who is released without being charged with a crime, his detention shall not be recorded as an arrest in any official record.

(b) Any statement, admission, or confession made by an arrested person within three hours immediately following his arrest shall not be excluded from evidence in the courts of the District of Columbia solely because of delay in presentment. (Dec. 27, 1967, Pub. L. 90–226, § 301, title III, 81 Stat. 735.)

SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967

Section 1101, Act Dec. 27, 1967, Pub. L. 90–226, provided:

Whoever, prior to the date of enactment of this Act [Pub. L. 90–226], commits any act or engages in any conduct which constitutes an offense under provision of law amended by this Act [Amendments of sections, 4–140, 15–714, 15–716, 22–501, 22–703, 22–1513, 22–1801, 22–2001, 22–2901, 22–3105, 22–3201, 22–3202, 23–610, 23–901, 23–903, 24–301 and enactments of sections 4–140a, 4–150a and 22–1122, and amendments of 18 U.S.C. 4122, 5024 and 5025], shall be sentenced in accordance with the law in effect on the date he commits such acts or engages in such conduct.

SEPARABILITY OF PROVISIONS

Section 1102, Act Dec. 27, 1967, Pub. L. 90–226, provided:

If any provision of or any amendment made by this Act [Pub. L. 90–226; for amendments made by this Act, see enumeration in note above under heading, "Sentence for offenses committed prior to Dec. 27, 1967."], or the application thereof to any person or circumstance is held invalid, the other provisions of or other amendments made by this Act and the application of such provisions and amendments to other persons or circumstances shall not be affected thereby.

CROSS REFERENCES

Federal laws with respect to admissibility of confessions in criminal prosecutions by the District of Columbia, see 18 U.S.C. § 3501.

Eye witness testimony in criminal prosecutions, admissibility of, see 18 U.S.C. § 3502.

Wiretap evidence, see 18 U.S.C. §§ 2510 to 2520.

§ 4–141. Repealed. July 29, 1970, Pub. L. 91–358, § 210 (b)(1), title II, 84 Stat. 653.

Section being 398 of the Revised Statutes, dealt with powers of police officers in connection with suspected felonies. See new section 23–581.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

§ 4–142. Information and return after arrest.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(100) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to rules and regulations regarding the written return of arrests, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 4–143. Penalty for neglect to make arrest.

If any member of the police force shall neglect making any arrest for an offense against the laws of the United States committed in his presence, he shall be deemed guilty of a misdemeanor and shall be punishable by imprisonment in the District jail or penitentiary not exceeding two years, or by a fine not exceeding $500. A member of the police force who deals with an individual in accordance with section 24–524(b) shall not be considered as having violated this section. (R.S.D.C. § 400; Aug. 3, 1968, Pub. L. 90–452, § 2(b), 82 Stat. 618.)

AMENDMENT

1968—Section 2(b), act Aug. 3, 1968, Pub. L. 90–452, amended the section by adding the last sentence as above set out.

SHORT TITLE

Section 1, act Aug. 3, 1968, Pub. L. 90–452, provided: That this Act (amending sections 4–143, 25–128, renumbering section 14 of the Act of Aug. 4, 1947, Ch. 472, as section 16, classified as section 25–111a, repealing section 24–514, striking out sections 1 to 13 of the Act of Aug. 4, 1947 and inserting new sections 1 to 15, classified as sections 24–521 to 24–535 may be cited as the "District of Columbia Alcoholic Rehabilitation Act of 1967").

§ 4–143a. Legal assistance for police in wrongful arrest cases.

(a) In accordance with regulations prescribed by the Council of the District of Columbia, the Corporation Counsel of the District of Columbia shall represent any officer or member of the Metropolitan Police Department, if he so requests, in any civil action for damages resulting from an alleged wrongful arrest by such officer or member.

(b) If the Corporation Counsel fails or is unable to represent such officer or member when requested to do so, the Commissioner of the District of Columbia shall compensate such officer or member for reasonable attorney's fees (as determined by the court) incurred by him in his defense of the action against him. (July 29, 1970, Pub. L. 91–358, § 501, title V, 84 Stat. 666.)

EFFECTIVE DATE

Section 502 of Act July 29, 1970, Pub. L. 91–358, provided: The amendments made by this title [the enactment of section 4–143a] shall take effect with respect to civil actions in the United States District Court for the District of Columbia or any District of Columbia court brought after the date of enactment of this Act [July 29, 1970] against a member or officer of the Metropoltian Police Department for damages resulting from an alleged wrongful arrest by such officer or member.

§ 4–144. Detention of witnesses.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(101) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

CROSS REFERENCE

For additional provisions relating to detention and release of material witnesses, see §§ 23–1321(h), 23–1326.

§ 4–145. Authority for search and arrest in cases of gaming-houses, bawdy-houses, and deposit or sale of lottery tickets.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–148. Examination of books and premises of certain establishments.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–150a. False or fictitious reports to Metropolitan Police—Penalty.

Whoever shall make or cause to be made to the Metropolitan Police force of the District of Columbia, or to any officer or member thereof, a false or fictitious report of the commission of any criminal offense within the District of Columbia, or a false or fictitious report of any other matter or occurrence of which such Metropolitan Police force is required to receive reports, or in connection with which such Metropolitan Police force is required to conduct an investigation, knowing such report to be false or fictitious; or who shall communicate or cause to be communicated to such Metropolitan Police force, or any officer or member thereof, any false information concerning the commission of any criminal offense within the District of Columbia or concerning any other matter or occurrence of which such Metropolitan Police force is required to receive reports, or in connection with which such Metropolitan Police force is required to conduct an investigation, knowing such information to be false, shall be punished a fine of not exceeding $300 or by imprisonment not exceeding thirty days. (Dec. 27, 1967, Pub. L. 90–226, § 608, title VI, 81 Stat. 739.)

SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967

Section 1101, Act Dec. 27, 1967, Pub. L. 90–226, provided: Whoever, prior to the date of enactment of this Act, [Pub. L. 90–226] commits any act or engages in any conduct which constitutes an offense under provision of law amended by this Act [Amendments of sections 4–140, 15–714, 15–716, 22–501, 22–703, 22–1513, 22–1801, 22–2001, 22–2901, 22–3105, 22–3201, 22–3202, 23–610, 23–901, 23–903, 24–301 and enactments of sections 4–140a, 4–150a and 22–1122, and amendments of 18 U.S.C. 4122, 5024 and 5025] shall be sentenced in accordance with the law in effect on the date he commits such acts or engages in such conduct.

SEPARABILITY OF PROVISIONS

Section 1102, Act Dec. 27, 1967, Pub. L. 90–226, provided: If any provision of or any amendment made by this Act [Pub. L. 90–226; for amendments made by this Act, see enumeration in note above under heading, "Sentence for offenses committed prior to Dec. 27, 1967."] or the application thereof to any person or circumstance is held invalid, the other provisions of or other amendments made by this Act and the application of such provisions and amendments to other persons or circumstances shall not be affected thereby.

§ 4–155. Property clerk may administer oaths.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–156. Return of property by property clerk—Two or more claimants—Liability of property clerk—Property needed as evidence—Storage fees—Disposal after thirty days notice to owner.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(102) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (e) in relation to disposition of property under the proviso clause, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 4–158. Claims of third persons.

NOTES TO DECISIONS

Release of evidence

Notice should be given to an accused of any proposed release of evidence and court order should be obtained so that enough evidence may be retained to prevent any prejudice. *United States* v. *A. B. Averell, Jr., et al.* (1969, 269 F. Supp. 1004).

§ 4–159. Property coming into possession of police to be transmitted to property clerk—Disposition of property of deceased and incompetent persons—Storage of property—Fees for storage and custody of property—Sale of stored property—Deposit of collected fees.

* * * * *

(b)(1) Whenever any money or property of a deceased person of a value of less than $1,000 coming into the custody of the property clerk shall remain in his custody for a period of six months or more without being claimed and repossessed by the next of kin or the legal representative of such deceased person, such money or property shall be disposed of as lost or abandoned property as provided in section 4–160 of this chapter: *Provided,* That prior to the disposition of such property of a deceased person it shall be the duty of the property clerk to ascertain whether there is pending in the court having probate jurisdiction any petition seeking the appointment of a legal representative of such deceased person, and, if such a petition is pending in such court, the property clerk shall not dispose of such property until final disposition by the court of such petition: *Provided further,* That in any case where the property clerk acquires actual knowledge that a petition for the appointment of a legal representative of such deceased person has been filed or is pending in a court outside of the District of Columbia, the property clerk shall not dispose of such property until final disposition by the court of such petition.

(2) Whenever any money or property of a deceased person shall be of a value of $1,000 or more

and shall have remained in the custody of the property clerk for at least six months, all records pertaining to the same shall be referred by the property clerk to the Corporation Counsel of the District of Columbia for the purpose of instituting appropriate proceedings to effect the appointment of an administrator of the estate of such decedent: *Provided,* That upon expiration of the time for final settlement of such estate under law then in effect, the residue thereof in the absence of any claim by the heirs-at-law or next of kin of the decedent, as provided by law, shall be deposited into the Registry of the court having probate jurisdiction, and upon the expiration of a period of three years, no demand having been made upon such funds by lawful heirs or other rightful claimants, the amount so deposited in such registry shall be deposited in the Treasury to the credit of the District of Columbia: *Provided further,* That if the administrator does not take possession of such property within three months from the date of his appointment, the property clerk may, after giving such administrator thirty days' notice by registered or certified mail, sell such property at public auction, and, after deducting the expenses of such sale, and expense incident to the maintenance of custody of such property, shall pay the remaining proceeds of such sale over to such administrator.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 158(a)(1), 84 Stat. 576.)

AMENDMENT

1970—Section 158(a)(1) of Act July 29, 1970, Public Law 91–358, amended subsection (b) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction" and by striking out "Probate Court" and inserting "court having probate jurisdiction."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(103) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (c) in relation to disposition of property under clause (b), to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 4–160. Sales at public auction—Procedure—Sales of motor vehicles with liens of record—Notice to lienors and lienees—Abandonment of liens—Notice to Recorder of Deeds—Application of proceeds of sale—Deposit of moneys in Treasury—Moneys and other property of insane persons excepted.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(104) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) in relation to disposition of property, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4–159.

§ 4–163. Delivery of property to owner pending trial.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–171a. Private detectives required to give bond—Conditions of bond—Suits on bond by injured persons.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(105) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in relation to the bonding provisions, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 4–174. Police laws and regulations applicable to private detectives.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–177. Police code—Publication authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–178. Legal effect of police code.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–182. Police Department band—Director.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–186. Bonding of Metropolitan Police.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(106) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 4.—FIRE DEPARTMENT

§ 4–401. Fire department to embrace entire District of Columbia—Property of department to be assigned and located by Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–402. Commissioners to have exclusive jurisdiction—Rules and regulations—Appointments to be under civil service—Selection of chief engineer and deputy chief engineers—Original appointment and promotion of privates—Vacancies.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(107) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section insofar as making, altering, or amending rules and regulations relating to officers and members of the fire department, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 4–403. Age limits on original appointments.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(108) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

CROSS REFERENCES

Age limits on original appointments to Metropolitan police department, see § 4–107.

§ 4–404. Two-platoon system—Classification of officers—Police surgeons to attend members of fire department—May call veterinary surgeon—Transfer to new grades.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–404a. Workweek established—Hours—Days off—Holidays—Exceptions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–406. Appropriations for clothing.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–407. Resignation from service—Membership in organization using strike methods prohibited—Conspiracy to obstruct operations of department—Penalty.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–409a. Restrictions on members of Fire Department leaving District—Residence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4–132a.

§ 4–411. Use of equipment for volunteer fire organizations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(109) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 4–413. Apparatus—Construction.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–414. Reciprocal agreements for mutual aid.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(110) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 5.—POLICEMEN AND FIREMEN'S RETIREMENT AND DISABILITY

§ 4–504a. Credit for active service in military or naval forces.

CHANGE OF NAME

The "White House Police force" was changed to "Executive Protective Service" by section 202 of act June 30, 1970, Pub. L. 91–297, 84 Stat. 358.

§ 4–505. Commissioners to determine amount of pension relief.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–521. Definitions.

Wherever used in sections 4–521 to 4–535—

* * * * *

(3) The term "widow" means the surviving wife of a member or former member if—

(A) she was married to such member or former member (i) while he was a member, or (ii) for at least two years immediately preceding his death, or

(B) she is the mother of issue by such marriage.

(4) The term "widower" means the surviving husband of a member who was married to such individual while she was a member.

(5)(A) The term "child" means an unmarried child, including (i) an adopted child, and (ii) a stepchild or recognized natural child who lives with the member in a regular parent-child relationship, under the age of eighteen years, or such unmarried child regardless of age who, because of physical or mental disability incurred before the age of eighteen, is incapable of self-support.

(B) The term "student child" means an unmarried child who is a student between the ages of eighteen and twenty-two years, inclusive, and

who is regularly pursuing a full-time course of study or training in residence or in a high school, trade school, technical or vocational institute, junior college, college, university, or comparable recognized educational institution.

* * * * *

(As amended Oct. 26, 1970, Pub. L. 91–509, § 1(1)(2), 84 Stat. 1136; Dec. 7, 1970, Pub. L. 91–532, § 1(a), 84 Stat. 1392.)

AMENDMENTS

1970—Section 1(a) of act Dec. 7, 1970, Pub. L. 91–532, amended par. (3) to read as above set out. For provisions of par. (3) before this amendment, see 1967 edition of the code.

Section 1(1)(2) of act Oct. 26, 1970, Pub. L. 91–509, amended pars. (4) and (5) to read as above set out.

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–532

Section 1(b) of act Dec. 7, 1970, Pub. L. 91–532, provided: The amendment made by this Act [amending § 4–521(3)] shall apply with respect to any surviving wife of a "member" (as that term is defined in subsection (a)(1) of the Policemen and Firemen's Retirement and Disability Act) or former member irrespective of whether such wife became a "widow" (as that term is defined in such amendment) prior to, on, or after the date of the enactment of this Act, except that no annuity shall be paid by reason of the amendment made by this Act for any period prior to the first day of the first pay period beginning on or after January 1, 1971.

EFFECTIVE DATE OF 1970 AMENDMENTS BY PUB. L. 91–509

Section 2 of Act Oct. 26, 1970, Pub. L. 91–509, provided: "The provisions of this Act [amending sections 4–521, 4–524, 4–527, 4–528, 4–530, and 4–531] shall take effect on the first day of the first pay period which begins on or after the date of enactment."

SHORT TITLE

Section 3 of Act Oct. 26, 1970, Pub. L. 91–509, provided: "This Act [amending sections 4–521, 4–524, 4–527, 4–528, 4–530, and 4–531] may be cited as the 'Policemen and Firemen's Retirement and Disability Act Amendments of 1970'."

CHANGE OF NAME

The "White House Police force" was changed to "Executive Protective Service" by section 202 of act June 30, 1970, Pub. L. 91–297, 84 Stat. 358.

PROHIBITION ON INCREASE IN RETIREMENT COMPENSATION

Section 107(d) of act June 30, 1970, Pub. L. 91–297, provided:

"(d) Notwithstanding any other provision of this or any other law, individuals retired from active service prior to the effective date of this title and entitled to receive a pension relief allowance or retirement compensation under the provisions of section 12 of the Policemen and Firemen's Retirement and Disability Act [§§ 4–521 to 4–537] shall not be entitled to receive an increase in their pension relief allowance or retirement compensation by reason of the enactment of this section."

RETIRED ASSISTANT INSPECTOR TO BE CONSIDERED ASSISTANT CHIEF FOR PURPOSE OF COMPUTING RETIREMENT BENEFITS

Section 108 of act June 30, 1970, Pub. L. 91–297, provided:

"All retired officers and members of the Metropolitan Police force who at any time prior to October 1, 1956, held the rank of Assistant Superintendent shall be held and considered for the purpose of computing retirement benefits payable on and after the effective date of this title to have retired in the rank of Assistant Chief."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4–522, 4–523, 4–524, 4–526, 4–528, 4–533, 4–534, 4–535, 4–536, 4–537, 4–538.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 sections 6308 and 8101 of the U.S. Code.

NOTES TO DECISIONS

Additional evidence on rehearing

Where police officer in District of Columbia was discharged for mental disability allegedly not caused or aggravated in line of duty following hearing before Police and Firemen's Retirement and Relief Board, so that he was not entitled to pension, and it was determined that officer was entitled to reconsideration of his case because Board failed to make any findings to sustain its conclusion that disability was not work related, and in the meantime functions of Board had been transferred to single Commissioner, commonly referred to as the Mayor, parties were entitled to submit additional evidence on reconsideration by the single Commissioner. *L. C. Wingo* v. *W. E. Washington et al.* (1968, 395 F. 2d 633, 129 U.S. App. D.C. 410).

Findings by Board required

Where police officer was discharged for mental disability allegedly not caused or aggravated in line of duty following hearing before Police and Firemen's Retirement and Relief Board, so that he was not entitled to pension, action of Board was entitled to weight, but only if there were relevant findings and findings in turn were supported by adequate evidence, and findings must be enough to indicate that consideration was given by Board to claims of fact put forward by offiecr especially where his claims had at least some appearance of reasonableness and substantiality. *L. C. Wingo* v. *W. E. Washington et al.* (1968, 395 F. 2d 633, 129 U.S. App. D.C. 410).

Where police officer in District of Columbia was discharged for mental disability allegedly not caused or aggravated in line of duty following hearing before Police and Firemen's Retirement and Relief Board, so that he was not entitled to pension, essential findings by Board were required to be detailed only once by Board. *Id.*

Where police officer in District of Columbia was discharged for mental disability allegedly not caused or aggravated in line of duty following hearing before Police and Firemen's Retirement and Relief Board, so that he was not entitled to pension, officer was entitled to reconsideration, in absence of findings by Board, which merely registered its conclusion that disability of officer was not work related. *Id.*

Proof of non-service-connected disability

Where it is District of Columbia police department which initiates proceeding to retire officer against his will and for a disability which is alleged to be unrelated to his official service, the evidence of such lack of connection should clearly preponderate and be substantial and persuasive. *L. C. Wingo* v. *W. E. Washington et al.* (1968, 395 F. 2d 633, 129 U.S. App. D.C. 410).

Where police officer in District of Columbia was discharged for mental disability allegedly not caused or aggravated in line of duty following hearing before Police and Firemen's Retirement and Relief Board, so that he was not entitled to pension, determination that officer's disability was not related to his service was required to be supported by substantial and persuasive evidence and was required to be supported by findings of board setting forth material facts. *Id.*

§ 4–522. United States Secret Service Division—Transfer of Civil Service retirement funds—Credit for prior service with other police units.

CHANGE OF NAME

The "White House Police force" was changed to "Executive Protective Service" by section 202 of act June 30, 1970, Pub. L. 91–297, 84 Stat. 358.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 sections 6308 and 8101 of the U.S. Code.

§ 4–523. Creditable service—Military and other government service.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4–521.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 sections 6308 and 8101 of the U.S. Code.

§ 4–524. Deductions, deposits and refunds—Order of persons entitled to refunds for deductions.

(1) On and after the first day of the first pay period which begins on or after the effective date of the Policemen and Firemen's Retirement and Disability Act Amendments of 1970 there shall be deducted and withheld from each member's basic salary an amount equal to 7 per centum of such basic salary. Such deductions and withholdings shall be paid to the Collector of Taxes of the District of Columbia, and shall be deposited in the Treasury to the credit of the District of Columbia.

(2) Any member coming under the provisions of sections 4–521 to 4–535 who is separated from his department, except for retirement as authorized by such sections, shall be refunded the amount of the deductions made from his salary under such sections. The receipt of payment of such deductions by such member shall void all annuity rights under such sections, unless and until such member shall be reappointed to any department whose members come under such sections. If such officer or member is subsequently reappointed to any department whose members come under such sections, he shall be required to redeposit the amount of deductions so refunded to him.

(3) In order to facilitate the settlement of the accounts of each member coming under the provisions of sections 4–521 to 4–535 who dies prior to retirement leaving no survivor entitled to receive an annuity under the provisions of such sections, the Commissioners shall pay all deductions for retirement made from the salary of such deceased member to the person or persons surviving at the time of death, in the following order of precedence, and such payment shall be a bar to recovery by any other person of amounts so paid:

First, to the beneficiary or beneficiaries designated in writing by such member, filed with the Commissioners and received by them prior to the death of such member;

Second, if there be no such beneficiary, to the child or children of such deceased member and the descendants of deceased children by representation;

Third, if there be none of the above, to the parents of such member, or the survivor of them;

Fourth, if there be none of the above, to the duly appointed legal representative of the estate of the deceased member, or if there be none to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased member: *Provided,* That if no natural person is determined to be entitled thereto such payment shall escheat to the government of the District of Columbia.

(4) In order to facilitate the settlement of the accounts of each former member coming under the provisions of sections 4–521 to 4–535 who dies after retirement (1) leaving no survivor entitled to receive an annuity under the provisions of sections 4–521 to 4–535 and (2) before the aggregate amount of the annuity paid to such former member equals the total amount deducted and withheld for retirement from his salary as a member, the Commissioner shall pay the difference to the person or persons surviving at the time of death in the following order of precedence, and such payment shall be a bar to recovery by any other person of the amount so paid:

First, to the beneficiary or beneficiaries designated in writing by such former member, filed with the Commissioner and received by him prior to the death of such former member;

Second, if there be no such beneficiary, to the child or children of such deceased former member and the descendants of deceased children by representation;

Third, if there be none of the above, to the parents of such former member, or the survivor of them; and

Fourth, if there be none of the above, to the duly appointed legal representative of the estate of the deceased former member, or if there be none to the person or persons determined to be entitled thereto under the laws of the domicile of the deceased former member: *Provided,* That if no natural person is determined to be entitled thereto such payment shall escheat to the government of the District of Columbia. (Sept. 1, 1916, ch. 433, § 12(d), as added Aug. 21, 1957, 71 Stat. 393, Pub. L. 85–157, § 3, and amended Aug. 20, 1958, 72 Stat. 686, Pub. L. 85–693, § 1; Oct. 26, 1970, Pub. L. 91–509, § 1(3), 84 Stat. 1136.)

AMENDMENTS

1970—Section 1(3) of Act Oct. 26, 1970, Pub. L. 91–509, amended sections as follows:

(A) Par. (1) amended by substituting "the effective date of the Policemen and Firemen's Retirement and Disability Act Amendments of 1970" for "August 21, 1957", and by increasing retirement deductions from 6½ to 7 per centum of basic salary.

(B) Par. (3) amended by inserting immediately before the period at the end thereof a colon and the following: "*Provided,* That if no natural person is determined to be entitled thereto such payment shall escheat to the government of the District of Columbia".

(C) By adding at the end thereof a new par. (4) to read as above set out.

1958—Par. (1) amended by act Aug. 20, 1958, which substituted "August 21, 1957" for "October 1, 1956."

EFFECTIVE DATE OF 1970 AMENDMENTS

See section 2 of Act Oct. 26, 1970, Pub. L. 91–509, set out as a note to § 4–521.

EFFECTIVE DATE OF 1958 AMENDMENT

Section 2 of act Aug. 20, 1958, provided that: "This Act [amending par. (1)] shall be effective as of the date of approval of the Policemen and Firemen's Retirement and Disability Act Amendments of 1957 [Aug. 21, 1957]."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 sections 6308 and 8101 of the U.S. Code.

§ 4–525. Medical and hospital service—Payment of by District on certificate of Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 sections 6308 and 8101 of the U.S. Code.

§ 4–526. Retirement for disability not incurred in performance of duty.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4–530, 4–531.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 sections 6308 and 8101 of the U.S. Code.

§ 4–527. Retirement for disability while performing or not performing duty.

(1) Whenever any member is injured or contracts a disease in the performance of duty or such injury or disease is aggravated by such duty at any time after appointment and such injury or disease or aggravation permanently disables him for the performance of duty, he shall upon retirement for such disability, receive an annuity computed at the rate of 2½ per centum of his basic salary at the time of retirement for each year or portion thereof of his service: *Provided,* That such annuity shall not exceed 70 per centum of his basic salary at the time of retirement, nor shall it be less than 66⅔ per centum of his basic salary at the time of retirement.

(2) In any case in which the proximate cause of an injury incurred or disease contracted by a member is doubtful, or is shown to be other than the performance of duty, and such injury or disease is shown to have been aggravated by the performance of duty to such an extent that the member is permanently disabled for the performance of duty, such disability shall be construed to have been incurred in the performance of duty. The member shall, upon retirement for such disability, receive an annuity computed at the rate of 2½ per centum of his basic salary at the time of his retirement for each year or portion thereof of his service: *Provided,* That such annuity shall not exceed 70 per centum of his basic salary at the time of retirement, nor shall it be less than 66⅔ per centum of his basic salary at the time of retirement. (Sept. 1, 1916, ch. 433, § 12(g), as added Aug. 21, 1957, 71 Stat. 394, Pub. L. 85–157, § 3; Oct. 23, 1962, 76 Stat. 1133, Pub. L. 87–857, § 1; Oct. 26, 1970, Pub. L. 91–509, § 1(4), 84 Stat. 1137.)

AMENDMENT

1970—Section 1(4) of Act Oct. 26, 1970, Pub. L. 91–509, amended section by striking out "2 per centum" wherever it appears and inserting in lieu thereof "2½ per centum".

EFFECTIVE DATE OF 1970 AMENDMENT

See section 2 of Act Oct. 26, 1970, Pub. L. 91–509, set out as a note to § 4–521.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4–530, 4–531.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 sections 6308 and 8101 of the U.S. Code.

§ 4–528. Optional retirement—Conditions—Suspension of retirement provisions during emergency.

(1) Any member who completes twenty years of police or fire service may, after giving at least sixty days' written advance notice to his department head stating his intention to retire and stating the date on which he will retire, voluntarily retire from the service and shall be entitled to an annuity computed at the rate of 2½ per centum of his basic salary at the time of his retirement for each year of service; except that the rate of 3 per centum of his basic salary at time of retirement shall be used to compute each year's police or fire service in excess of twenty years: *Provided,* That such notice requirement may be waived by the department head when, in his opinion, circumstances justify such waiver: *Provided further,* That whenever the Commissioners or the Chief of the White House Police force, or the Chief of the United States Park Police force, or the Chief of the United States Secret Service division shall determine that there exists an emergency which is likely to endanger the safety of the public and that the public safety cannot be adequately protected except by suspending the retirement provisions of this paragraph, then the Commissioners or any of said Chiefs shall be authorized to suspend the retirement provisions of this paragraph in any one or more of the departments under their respective jurisdictions until such time as, in the opinion of the Commissioners or any of said Chiefs, respectively, public safety can be adequately protected without such suspension.

(2) Any member of the Metropolitan Police force or of the Fire Department of the District of Columbia having reached the age of sixty years shall, in the discretion of the Commissioners, and any member of the White House Police force or of the United States Park Police force or of the United States Secret Service Division to whom sections 4–521 to 4–535 apply shall, in the discretion of the head of his department, be retired from the service and shall be entitled to receive an annuity as computed in paragraph (1).

(3) No annuity granted under paragraph (1) or (2) of this section shall exceed 80 per centum of the basic salary of such member at the time of retirement. (Sept. 1, 1916, ch. 433 § 12(h), as added Aug. 21, 1957, 71 Stat. 395, Pub. L. 85–157, § 3; Oct. 26, 1970, Pub. L. 91–509, § 1(5)(6), 84 Stat. 1137.)

AMENDMENT

1970—Section 1(5)(6) of Act Oct. 26, 1970, Pub. L. 91–509, amended par. (1) by striking out "attains the age of fifty years and" and by substituting "2½ per centum" for "2 per centum"; and amended par. (3) by substituting "80 per centum" for "70 per centum".

EFFECTIVE DATE OF 1970 AMENDMENT

See section 2 of Act Oct. 26, 1970, Pub. L. 91–509, set out as a note to § 4–521.

CHANGE OF NAME

The "White House Police force" was changed to "Executive Protective Service" by section 202 of act June 30, 1970, Pub. L. 91–297, 84 Stat. 358.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4–531.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 sections 6308 and 8101 of the U.S. Code.

§ 4–529. Involuntary separation from service.

TRANSFER OF FUNCTIONS

Part IV of Org. Ord. No. 12, dated Aug. 6, 1968, set out in Appendix to title 1, delegated the authority, to express a judgment as to the disability of a member from performing further duty in his department, to the Police and Firemen's Retirement and Relief Board.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 sections 6308 and 8101 of the U.S. Code.

NOTES TO DECISIONS

Additional evidence on rehearing

Where police officer in District of Columbia was discharged for mental disability allegedly not caused or aggravated in line of duty following hearing before Police and Firemen's Retirement and Relief Board, so that he was not entitled to pension, and it was determined that officer was entitled to reconsideration of his case because Board failed to make any findings to sustain its conclusion that disability was not work related, and in the meantime functions of Board had been transferred to single Commissioner, commonly referred to as the Mayor, parties were entitled to submit additional evidence on reconsideration by the single Commissioner. *L. C. Wingo* v. *W. E. Washington et al.* (1968, 395 F. 2d 633, 129 U.S. App. D.C. 410).

Findings by Board required

Where police officer was discharged for mental disability allegedly not caused or aggravated in line of duty following hearing before Police and Firemen's Retirement and Relief Board, so that he was not entitled to pension, action of Board was entitled to weight, but only if there were relevant findings and findings in turn were supported by adequate evidence, and findings must be enough to indicate that consideration was given by Board to claims of fact put forward by officer especially where his claims had at least some appearance of reasonableness and substantiality. *L. C. Wingo* v. *W. E. Washington et al.* (1968, 395 F. 2d 633, 129 U.S. App. D.C. 410).

Where police officer in District of Columbia was discharged for mental disability allegedly not caused or aggravated in line of duty following hearing before Police and Firemen's Retirement and Relief Board, so that he was not entitled to pension, essential findings by Board were required to be detailed only once by Board. *Id.*

Where police officer in District of Columbia was discharged for mental disability allegedly not caused or aggravated in line of duty following hearing before Police and Firemen's Retirement and Relief Board, so that he was not entitled to pension, officer was entitled to reconsideration, in absence of findings by Board, which merely registered its conclusion that disability of officer was not work related. *Id.*

Proof of non-service-connected disability

Where it is District of Columbia police department which initiates proceeding to retire officer against his will and for a disability which is alleged to be unrelated to his official service, the evidence of such lack of connection should clearly preponderate and be substantial and persuasive. *L. C. Wingo* v. *W. E. Washington et al.* (1968, 395 F. 2d 633, 129 U.S. App. D.C. 410).

Where police officer in District of Columbia was discharged for mental disability allegedly not caused or aggravated in line of duty following hearing before Police and Firemen's Retirement and Relief Board, so that he was not entitled to pension, determination that officer's disability was not related to his service was required to be supported by substantial and persuasive evidence and was required to be supported by findings of board setting forth material facts. *Id.*

§ 4–530. Recovery from disability or restoration to earning capacity—Earning capacity defined—Suspension of annuity—Restoration to duty.

(1) If any annuitant retired under section 4–526 or 4–527, before reaching the age of fifty, recovers from his disability or is restored to an earning capacity fairly comparable to the current rate of compensation of the position occupied at the time of retirement, payment of the annuity shall cease (1) upon reemployment in the department from which he was retired, (2) one year from the date of the medical examination showing such recovery, or (3) one year from the date of determination that he is so restored, whichever is earliest. Earning capacity shall be deemed restored if in each of two succeeding calendar years the income of the annuitant from wages or self-employment or both shall be equal to at least 80 per centum of the current rate of compensation of the position occupied immediately prior to retirement. Nothing in this section shall preclude such member from having an annuity reestablished if his disability recurs, or when his earning capacity is less than 80 per centum of the rate of compensation of the position occupied immediately prior to retirement for any full year thereafter: *Provided,* That whenever any member is reinstated with his respective department it shall be at the same grade or rank held by the member at the time of his retirement.

(2) When an annuitant recovers prior to age fifty from a disabling condition for which he has been retired, and applies for reinstatement in the department from which he was retired, he shall be reinstated in the same or nearest equivalent grade and salary available as that received at the time of his separation from the service: *Provided,* That such applicant meets the current entrance requirements of such department as to character. (Sept. 1, 1916, ch. 433, § 12(j), as added Aug. 21, 1957, 71 Stat. 396, Pub. L. 85–157, § 3; Oct. 26, 1970, Pub. L. 91–509, § 1(7), 84 Stat. 1137.)

AMENDMENT

1970—Section 1(7) of Act Oct. 26, 1970, Pub. L. 91–509, amended section by striking out "fifty-five" wherever it appears and inserting in lieu thereof "fifty".

EFFECTIVE DATE OF 1970 AMENDMENT

See section 2 of Act Oct. 26, 1970, Pub. L. 91–509, set out as a note to § 4–521.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 sections 6308 and 8101 of the U.S. Code.

§ 4–531. Survivor annuities—Amount—To whom payable—Election of type of annuity.

(1) In the event that any member dies in the performance of duty, and such death is determined by the Commissioner to have been the sole and direct result of a personal injury sustained while performing such duty, leaving a survivor who received more than one-half his support from a member, such survivor shall be entitled to receive a lump sum payment of $50,000: *Provided,* That if such death is caused by the willful misconduct of the member or by the member's intention to bring about

the death of himself, or if intoxication of the injured member is the proximate cause of such death, no such lump sum payment shall be made: *And provided further,* That if such member is survived by more than one person who received more than one-half of his support from the member, each such survivor shall be entitled to receive an equal share of such lump-sum payment.

(2) In case of the death of any member before retirement, or of any former member after retirement, leaving a widow or widower, such widow or widower shall be entitled to receive an annuity in the greater amount of (1) 40 per centum of such member's basic salary at the time of death, or 40 per centum of the basis upon which the annuity, relief, or retirement compensation being received by such former member at the time of death was computed, or (2) 40 per centum of the corresponding salary for step 6, subclass (a), class 1 of the District of Columbia Police and Firemen's Salary Act salary schedule currently in effect at the time of such member or former member's death: *Provided,* That such annuity shall not exceed the current rate of compensation of the position occupied by such member at the time of death, or by such former member immediately prior to retirement.

(3) Each surviving child or student-child of any member who dies before retirement, or of any former member who dies after retirement, shall be entitled to receive an annuity equal to the smallest of (1) 60 per centum of the member's basic salary at the time of his death or of the basis upon which the former member's annuity at the time of his death was computed, divided by the number of eligible children; (2) $996; or (3) $2,988 divided by the number of eligible children: *Provided,* That such member or former member is survived by a wife or husband. If such member or former member is not survived by a wife or husband, each surviving child or student-child shall be paid an annuity equal to the smallest of (1) 75 per centum of the member's basic salary at the time of his death or of the basis upon which the former member's annuity at the time of his death was computed, divided by the number of eligible children; (2) $1,200; or (3) $3,600 divided by the number of eligible children.

(4) Each widow or widower who, on the effective date of the Policemen and Firemen's Retirement and Disability Act Amendments of 1970, was receiving relief or annuity computed in accordance with the provisions of this section shall be entitled to receive an annuity in the greater amount of (1) $3,144; or (2) 35 per centum of the basis upon which such relief or annuity was computed. Each child who, on said effective date, was receiving relief or annuity computed in accordance with the provisions of this section, shall be entitled to benefits computed in accordance with the provisions of paragraph (3) of this section.

(5) The annuity of any widow or widower under this section shall begin on the first day of the month in which the member or former member dies, and such annuity or any right thereto shall terminate upon the survivor's death or remarriage before age sixty: *Provided,* That any annuity terminated by remarriage may be restored if such remarriage is later terminated by death, annulment, or divorce. The annuity of any child under this section shall begin on the first day of the month in which the member or former member dies, and such annuity of such child or any right thereto shall terminate upon (A) his attaining age eighteen, unless incapable of self-support, (B) his becoming capable of self-support after age eighteen, (C) his marriage, or (D) his death. The annuity of any student-child under this section shall begin on the first day of the month in which the member or former member dies, and such annuity of such child or any right thereto shall terminate upon (i) his ceasing to be a student, (ii) his attaining age twenty-two, (iii) his marriage, or (iv) his death. Such student-child whose birthday falls during the school year (September 1 to June 30) shall be considered not to have reached age twenty-two until July 1 following his actual twenty-second birthday.

(6) Any member retiring under section 4–526, 4–527, or 4–528, may at the time of such retirement, elect to receive a reduced annuity in lieu of full annuity, and designate in writing the person to receive an increased annuity after the retired annuitant's death: *Provided,* That the person so designated be the surviving spouse or child of the retiring member. Whenever such an election is made, the annuity of the designee shall be increased by an amount equal to the amount by which the annuity of such retiring member is reduced. The annuity payable to the member making such election shall be reduced by 10 per centum of the annuity computed as provided in section 4–526, 4–527, or 4–528. Such increase in annuity payable to the designee shall be reduced by 5 per centum for each full five years the designee is younger than the retiring member, but such total reduction shall not exceed 40 per centum. The increase in annuity payable to the designee pursuant to this paragraph shall be paid in addition to the annuity provided for such designee pursuant to paragraph (2) or (3) of this section and shall be subject to the same limitations as to duration and other conditions as the annuity paid pursuant to paragraphs (2), (3), and (5) of this section. If, at any time after such former member's retirement, the designee dies, and is survived by such former member, the annuity payable to such former member shall be increased to the amount computed as provided in section 4–526, 4–527, or 4–528.

(7) (i) Each month after the effective date of this section the Commissioner shall determine the per centum change in the price index. On the basis of this determination, and effective the first day of the third month which begins after the price index shall have equaled the rise of at least 3 per centum for three consecutive months over the price index for the base month, each annuity payable under this section which has a commencing date not later than such effective date shall be increased by 1 per centum plus the per centum rise in the price index (calculated on the highest level of the price index during the three consecutive months) adjusted to the nearest one-tenth of 1 per centum.

(ii) The monthly installment of annuity after adjustment under this section shall be fixed at the

nearest dollar, except that such installment shall after adjustment reflect an increase of at least $1.

(iii) For purposes of this section, the term "price index" shall mean the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics. The term "base month" shall mean the month for which the price index showed a per centum rise, forming the basis for a cost-of-living annuity increase. (Sept. 1, 1916, ch. 433, § 12(k), as added Aug. 21, 1957, 71 Stat. 396, Pub. L. 85–157, § 3; Oct. 26, 1970, Pub. L. 91–509, § 1(8), 84 Stat. 1137.)

AMENDMENT

The District of Columbia Police and Firemen's Salary Act salary schedule, referred to in par. (2), is set out in § 4–823.

EFFECTIVE DATE OF 1970 AMENDMENT

1970—Section 1(8) of Act Oct. 26, 1970, Pub. L. 91–509, amended section to read as above set out. For provisions of section before this amendment, see 1967 edition of the code.

EFFECTIVE DATE OF 1970 AMENDMENTS

See section 2 of Act Oct. 26, 1970, Pub. L. 91–509, set out as a note to § 4–521.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4–539.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5, sections 6308 and 8101 of the U.S. Code.

§ 4–532. Funeral expenses.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFFERRED TO IN U.S. CODE

This section is referred to in title 5 sections 6308 and 8101 of the U.S. Code.

§ 4–533. Duties of Commissioners in retirement and annuity matters—Certification of physical condition of member—Written notice of hearing—Procedure at hearings—Subpena—Contempt proceedings.

The Commissioners shall consider all cases for the retirement of members and all applications for annuities under sections 4–521 to 4–535. In each case of retirement of a member the Commissioners shall certify in writing the physical condition of the member for whom retirement is sought. The Commissioners shall give written notice to any member under consideration by them for retirement to appear before them and to give evidence under oath. The proceedings before the Commissioners involving the retirement of any member, or any application for an annuity under sections 4–521 to 4–535, shall be reduced to writing and shall show the date of appointment of such member, his age, his record in the service, and any other information which may be pertinent to the matter of such retirement or annuity. The Commissioners are authorized to administer oaths and affirmations, may require by subpena or otherwise the attendance and testimony of witnesses and the production of documents at any designated place. In the event of contumacy or refusal to obey any such subpena or requirement under this section, the Commissioners may apply to the Superior Court of the District of Columbia for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order in accordance with the provisions of subsection (c) of section 11–756. (Sept. 1, 1916, ch. 433, § 12(m), as added Aug. 21, 1957, 71 Stat. 397, Pub. L. 85–157, § 3; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

REFERENCES IN TEXT

Section 11–756, referred to in text was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, § 21(a), and subsec. (c) thereof was replaced by section 11–982. Title 11 was entirely amended by section 111 of Pub. L. 91–358, and the provisions of former section 11–982 are now covered in section 11–944.

CODIFICATION

Section is comprised of subsec. (m) of section 12 of act Sept. 1, 1916. Remainder of section 12 of act Sept. 1, 1916 is classified to sections 4–521 to 4–532, 4–534 and 4–535.

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS

Part IV of Org. Ord. No. 12, dated Aug. 6, 1968, set out in the Appendix to title I, designated the Police and Firemen's Retirement and Relief Board as agent for the Commissioner, to make all findings of fact necessary in the determination of eligibility for retirement and survivor annuities.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 sections 6308 and 8101 of the U.S. Code.

§ 4–534. Payment of annuities—Order of payment on death of annuitant—Waiver.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 sections 6308 and 8101 of the U.S. Code.

§ 4–535. Delegation of functions by Commissioners—Regulations.

TRANSFER OF FUNCTIONS

Part IV of Org. Ord. No. 12, dated Aug. 6, 1968, set out in Appendix to title 1, designated the Police and Firemen's Retirement and Relief Board as agent for the Commissioner, to make all findings of fact necessary in the determination of eligibility for retirement and survivor annuities.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4–521, 4–522, 4–523, 4–524, 4–526, 4–528, 4–533, 4–534, 4–537, 4–538.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 sections 6308 and 8101 of the U.S. Code.

§ 4–537. Appropriation—Reimbursement to District of Columbia.

CHANGE OF NAME

The "White House Police force" was changed to "Executive Protective Service" by section 202 of act June 30, 1970, Pub. L. 91–297, 84 Stat. 358.

§ 4–538. Eligibility under the federal employees' compensation law.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4–536.

§ 4–539. Annuity rights of widows and children of officers and members who died in service prior to October 1, 1956—Existing benefits not reduced.

CHANGE OF NAME

The "White House Police force" was changed to "Executive Protective Service" by section 202 of act June 30, 1970, Pub. L. 91–297, 84 Stat. 358.

Chapter 6.—TRIAL BOARDS

§ 4–601. Trial boards may compel attendance of witnesses—Fees.

Any trial board of the Metropolitan police force or the fire department of the District of Columbia shall have the power to issue subpœnas in the name of the Chief Judge of the Superior Court of the District of Columbia to compel witnesses to appear and testify and/or to produce all books, records, papers or documents before said trial board: *Provided*, That witnesses other than those employed by the District of Columbia subpœnaed to appear before said trial board shall be entitled to the same fees as are paid witnesses for attendance before the Superior Court of the District of Columbia, but said fees need not be tendered said witnesses in advance of their appearing and testifying and/or producing books, records, papers or documents before said trial board. (May 11, 1892, 27 Stat. 29, ch. 65, § 1; Feb. 20, 1896, 29 Stat. 10, ch. 25, § 1; Apr. 16, 1932, 47 Stat. 86, ch. 118, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a)(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(14)(A), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(14)(A) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4–603.

§ 4–603. Process to secure attendance of witnesses.

If any witness having been personally summoned shall neglect or refuse to obey the subpœna issued in section 4–601, then in that event the chairman of the trial board may report that fact to the Superior Court of the District of Columbia or one of the judges thereof and said court, or any judge thereof, is empowered to compel obedience to said subpœna to the same extent as witnesses may be compelled to obey the subpœnas of that court. (May 11, 1892, 27 Stat. 29, ch. 65, § 3; Feb. 20, 1896, 29 Stat. 10, ch. 25, § 3; Apr. 16, 1932, 47 Stat. 87, ch. 118, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(14)(B), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(14)(B) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 8.—SALARIES

Sec.

4–823d–2. Adjustment of rates of basic compensation of officers and members to whom section 4–823, as amended by act May 27, 1968, applies—Initial advancement to longevity steps.

4–823d–3. Adjustment of rates of basic compensation of officers and members to whom section 4–823, as amended by act June 30, 1970, applies.

§ 4–802. Salary increase denied if service unsatisfactory—Removal for inefficiency—Additional compensation for efficiency.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(111) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section regarding the selection and reporting of names of privates and sergeants possessed of outstanding efficiency, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 4–807. Additional compensation for working on holidays.

CHANGE OF NAME

The "White House Police force" was changed to "Executive Protective Service" by section 202 of act June 30, 1970, Pub. L. 91–297, 84 Stat. 358.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(112) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section regarding additional compensation for working on holidays, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 4–808. Holiday defined.

CHANGE OF NAME

The "White House Police force" was changed to "Executive Protective Service" by section 202 of act June 30, 1970, Pub. L. 91–297, 84 Stat. 358.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(113) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of

the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 4–809. Applicability to White House Police force and United States Park Police force.

CHANGE OF NAME

The "White House Police force" was changed to "Executive Protective Service" by section 202 of act June 30, 1970, Pub. L. 91–297, 84 Stat. 358.

§ 4–823. Salary Schedules—Rates of basic compensation of officers and members of Metropolitan Police Force and Fire Department.

The annual rates of basic compensation of the officers and members of the Metropolitan Police force and the Fire Department of the District of Columbia shall be fixed in accordance with the following schedule of rates:

SALARY SCHEDULE

Salary class and title	Service step						Longevity step		
	1	2	3	4	5	6	A	B	C
Class 1:									
Subclass (a)	$8,500	$8,755	$9,180	$9,605	$10,285	$10,965	$11,390	$11,815	$12,240
Fire private.									
Police private.									
Subclass (b)	9,095	9,350	9,775	10,200	10,880	11,560	11,985	12,410	12,835
Private assigned as:									
Technician.									
Plainclothesman.									
Station clerk.									
Motorcycle officer.									
Horse mounted officer.									
Class 2:									
Subclass (a)	9,775	10,340	10,905	11,470			12,035	12,600	13,165
Fire inspector.									
Subclass (b)	10,370	10,935	11,500	12,065			12,630	13,195	13,760
Fire inspector assigned as:									
Technician.									
Class 3	10,625	11,155	11,685	12,215			12,745	13,275	13,805
Assistant marine engineer.									
Assistant pilot.									
Detective.									
Class 4:									
Subclass (a)	11,475	12,050	12,625	13,200			13,775	14,350	14,925
Fire sergeant.									
Police sergeant.									
Subclass (b)	11,900	12,495	13,090	13,685			14,280	14,875	15,470
Detective sergeant.									
Subclass (c)	12,070	12,645	13,220	13,795			14,370	14,945	15,520
Police sergeant assigned as:									
Motorcycle officer.									
Horse mounted officer.									
Class 5	13,300	13,965	14,630	15,295			15,960	16,625	
Fire lieutenant.									
Police lieutenant.									
Class 6	14,550	15,280	16,010	16,740			17,470	18,200	
Marine engineer.									
Pilot.									
Class 7	15,800	16,590	17,380	18,170			18,960	19,750	
Captain.									
Class 8	18,500	19,425	20,350	21,275			22,200	23,125	
Battalion fire chief.									
Police inspector.									
Class 9	21,500	22,575	23,650	24,725			25,800	26,875	
Deputy fire chief.									
Deputy chief of police.									
Class 10	23,800	25,780	27,760	29,750					
Assistant chief of police.									
Assistant fire chief.									
Commanding officer of the Executive Protective Service.									
Commanding officer of the U.S. Park Police.									
Class 11	29,925	31,350	32,775						
Fire chief.									
Chief of police.									

(Aug. 1, 1958, 72 Stat. 481, Pub. L. 85–584, title I, § 101; Oct. 24, 1962, 76 Stat. 1239, Pub. L. 87–882, § 1; Aug. 14, 1964, 78 Stat. 431, Pub. L. 88–426, title III, § 306(i)(6); Sept. 2, 1964, 78 Stat. 880, Pub. L. 88–575, title I, § 101; Nov. 13, 1966, 80 Stat. 1591, Pub. L. 89–810, title I, § 101; May 27, 1968, Pub. L. 90–320, § 1(a), 82 Stat. 140; May 27, 1968, Pub. L. 90–320, § 1(b), 82 Stat. 141; June 30, 1970, Pub. L. 91–297, title I, § 102, 84 Stat. 354; Dec. 7, 1970, Pub. L. 91–530, § 3, 84 Stat. 1391.)

CODIFICATION

Act July 18, 1966, Pub. L. 89–504 was the Federal Employees Salary Act of 1966. Section 108(b), (c) and (d) of that Act related to increase in compensation by administrative action. Act Sept. 11, 1967, Pub. L. 90–83, which incorporates certain provisions of the above act into the new title 5 U.S.C., repeals the provisions of section 108(b), (c) and (d), as executed without prejudice to existing rights.

AMENDMENTS

1970—Section 3 of act Dec. 7, 1970, Pub. L. 91–530, amended the salary schedule by striking out the rates $28,500, $29,925, $31,350, and $32,775 in salary class II and inserting in lieu thereof $29,925, $31,350, and $32,775.

Section 102, act June 30, 1970, Pub. L. 91–297, amended the salary schedule in this section to read as above set out.

1968—Section 1(a), act May 27, 1968, Pub. L. 90–320, amended the salary schedule in this section, effective the first day of the first pay period beginning on or after Oct. 1, 1967.

Section 1(b) of the same act amended the salary schedule, effective the first day of the first pay period beginning on or after July 1, 1968.

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–530

Section 4 of Pub. L. 91–530 provided: "The amendment made by the third section of this Act [amendment of § 4–823] shall take effect on the first day of the first pay period beginning on or after July 1, 1969."

EFFECTIVE DATE OF 1970 AMENDMENTS BY PUB. L. 91–297

Section 112 of title I of act June 30, 1970, Pub. L. 91–297, provided:

"This title and the amendments made by this title [amending secs. 4–823, 4–829(c), 4–830, 4–832(a)(3), and 4–823d–1(3), enacting sec. 4–823d–3, and enacting provisions set out as notes to secs. 4–521 and 4–823] shall take effect on the first day of the first pay period beginning on or after July 1, 1969."

EFFECTIVE DATE OF 1968 AMENDMENTS

Section 9 of act May 27, 1968, Pub. L. 90–320, provided:

"(a) Except as provided in subsection (b) of the first section (amendment of sec. 4–823) and in subsection (b) of this section (amendment of sec. 4–105), the effective date of this Act (amending secs. 4–105, 4–823, 4–832(a), enacting secs. 4–823d–2, and secs. 4, 5, 7 and 8 of this Act set out as notes to sec. 4–823) shall be the first day of the first pay period beginning on or after Oct. 1, 1967.

"(b) The effective date of the amendment made by section 6 of this Act (§ 4–105) shall be the date of the enactment of this Act." [May 27, 1968]

CHANGING TITLE OF THE POSITIONS OF DETECTIVE AND DETECTIVE SERGEANT ETC.

Section 4 of act May 27, 1968, Pub. L. 90–320, provided:

The Commissioner of the District of Columbia (or his delegate) may not as a part of any reorganization of the Metropolitan Police force or through any other administrative action—

(1) change the title of the positions of Detective and Detective Sergeant in salary classes 3 and 4, respectively, of the salary schedule contained in section 101 of the District of Columbia Police and Firemen's Salary Act of 1958 (D.C. Code, sec. 4–823),

(2) change the job description or duties of such positions as in effect on the effective date of this Act, or

(3) deny any individual serving in the position of Detective on the effective date of this Act reasonable opportunities to advance to the position of Detective Sergeant, or transfer such individual without his consent to any other position,

so long as any individual serving in the position of Detective on the effective date of this Act is serving in such position.

CONDITIONS FOR PERMANENT PROMOTIONS IN CERTAIN CASES

Section 5 of act May 27, 1968, Pub. L. 90–320, provided:

Any officer or member of the Metropolitan Police force, the White House Police force, the United States Park Police force, or the Fire Department of the District of Columbia who—

(1) successfully completed a written examination required for promotion to a position in such force or Department,

(2) was placed on a list of individuals eligible for a permanent promotion to such position,

(3) was assigned to serve in such position on an "acting" basis, and

(4) on January 1, 1968, had served at least 5 years in such position on such basis,

shall be given a permanent promotion, as of the effective date of this Act, to such position without the administration of any other written examination.

PLACEMENT IN SERVICE OR LONGEVITY STEPS OF THOSE PROMOTED AFTER JAN. 5, 1963, BUT BEFORE EFFECTIVE DATE OF TITLE I OF PUBLIC LAW 91–297; PROHIBITION ON REDUCTION OF COMPENSATION; CREDIT FOR PRIOR SERVICE

Section 107(a)–(c) of act June 30, 1970, Pub. L. 91–297, provided:

"(a) Each officer and member in active service on the effective date of this title to whom section 103 of this title [§ 4–823d–3] and the amendment made by section 102 of this title [to § 4–823] apply, who is receiving basic compensation at one of the scheduled service or longevity steps of a salary class or subclass other than subclass (a) or (b) of salary class 1, and whose latest promotion has been subsequent to January 5, 1963, and prior to the effective date of this title shall (1) be placed in the service or longevity step of his salary class or subclass which provides a salary not less than the amount he would have received as a result of sections 102, 103, and 105 of this title [amending §§ 4–823 and 4–830 and enacting § 4–823d–3] had such promotion occurred on or after the effective date of this title, and (2) receive the appropriate scheduled rate of basic compensation for such step in the salary class or subclass in which he is serving.

"(b) The rate of basic compensation received by any officer or member under the provisions of section 103 of this title [§ 4–823d–3] and the amendment made by section 102 of this title [to § 4–823] shall not be reduced by reason of the enactment of this section.

"(c) Any officer or member who receives additional compensation as a result of the enactment of this section shall be credited with any active service he has rendered in the service or longevity step in which he was serving immediately prior to the effective date of this title for subsequent advancement purposes under the provisions of section 303 or section 401, as the case may be, of the District of Columbia Police and Firemen's Salary Act of 1958 (D.C. Code, sec. 4–829, sec. 4–832)."

RETROACTIVE COMPENSATION AND GROUP INSURANCE PROVISIONS OF ACT JUNE 30, 1970, PUBLIC LAW 91–297

Sections 109 and 111 of title I of the above described Act provided:

SEC. 109. (a) Retroactive compensation or salary shall be paid by reason of this title only in the case of an individual in the service of the District of Columbia government or of the United States (including service in the Armed Forces of the United States) on the date of enactment of this title, except that such retroactive compensation or salary shall be paid (1) to an officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, or the Executive Protective Service, who retired during the period beginning on the first day of the first pay period which began on or after July 1, 1969, and ending on the date of enactment of this title for services rendered during such period, and (2) in accordance with the provisions of subchapter VIII of chapter 55 of title 5, United States Code (relating to settlement of accounts of deceased employees) for services rendered during the period beginning on the first day of the first pay period which began on or after July 1, 1969, and ending on the date of enactment of this title by an officer or member who dies during such period.

(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the Federal Government or the municipal government of the District of Columbia.

SEC. 111. For the purpose of determining the amount of insurance for which an individual is eligible under the provisions of chapter 87 of title 5, United States Code (relating to Government employees group life insurance), all changes in rates of compensation or salary which result from the enactment of this Act shall be held and considered to be effective as of the date of enactment of this title.

RETROACTIVE COMPENSATION AND GROUP INSURANCE PROVISIONS OF ACT, APR. 15, 1970, PUBLIC LAW 91–231

Section 5 of the above described Act provided:

(a) Retroactive pay, compensation, or salary shall be paid by reason of this Act only in the case of an individual in the service of the United States (including service in the Armed Forces of the United States) or the municipal government of the District of Columbia on the date of enactment of this Act, except that such retroactive pay, compensation, or salary shall be paid—

(1) to an officer or employee who retired, during the period beginning on the first day of the first pay period

which began on or after December 27, 1969, and ending on the date of enactment of this Act, for services rendered during such period; and

(2) in accordance with subchapter VIII of chapter 55 of title 5, United States Code, relating to settlement of accounts, for services rendered, during the period beginning on the first day of the first pay period which began on or after December 27, 1969, and ending on the date of enactment of this Act, by an officer or employee who died during such period.

Such retroactive pay, compensation, or salary shall not be considered as basic pay for the purposes of subchapter III of chapter 83 of title 5 United States Code, relating to civil service retirement, or any other retirement law or retirement system, in the case of any such retired or deceased officer or employee.

(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the United States Government or the municipal government of the District of Columbia.

Section 9(c) of the above described Act provided:

(c) For purposes of determining the amount of insurance for which an individual is eligible under chapter 87 of title 5, United States Code, relating to group life insurance for Government employees, all changes in rates of pay, compensation, and salary which result from the enactment of this Act shall be held and considered to become effective as of the date of such enactment [Apr. 15, 1970].

RETROACTIVE COMPENSATION AND GROUP INSURANCE PROVISIONS OF ACT MAY 27, 1968, PUBLIC LAW 90–320

Sections 7 and 8 of the above described Act provided:

(a) Retroactive compensation or salary shall be paid by reason of this Act only in the case of an individual in the service of the District of Columbia government or of the United States (including service in the Armed Forces of the United States) on the date of enactment of this Act, except that such retroactive compensation or salary shall be paid (1) to an officer or member of the Metropolitan Police force, the Fire Department of the District of Columbia, the United States Park Police force, or the White House Police force, who retired during the period beginning on the first day of the first pay period which begins on or after October 1, 1967, and ending on the date of enactment of this Act, for services rendered during such period, and (2) in accordance with the provisions of subchapter VIII of chapter 55 of title 5, United States Code (relating to settlement of accounts of deceased employees), for services rendered during the period beginning on the first day of the first pay period which begins on or after October 1, 1967, and ending on the date of enactment of this Act, by an officer or member who dies during such period.

(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the Federal Government or the municipal government of the District of Columbia.

SEC. 8. For the purpose of determining the amount of insurance for which an officer or member is eligible under the provisions of chapter 87 of title 5, United States Code (relating to Government employees group life insurance), all changes in rates of compensation or salary which result from the enactment of this act shall be held and considered to be effective as of the date of enactment of this Act. [May 27, 1968]

SALARY RATES FIXED BY ADMINISTRATIVE ACTION

Sections 3(d) and 4(b) of act, Apr. 15, 1970, Pub. L. 91–231, 84 Stat. 197, provided:

SEC. 3. * * *

(d) Notwithstanding section 665 of title 31, the rates of pay of employees of the Federal Government and of the government of the District of Columbia whose rates of pay are fixed by administrative action pursuant to law and are not otherwise increased pursuant to this section are hereby authorized to be increased, effective on the first day of the first pay period which begins on or after December 27, 1969, by amounts not to exceed the increases provided pursuant to section 2 of this Act for corresponding rates of pay in the appropriate schedule or scale of pay.

SEC. 4. * * *

(b) Nothing in this act shall impair any authority pursuant to which rates of pay, compensation, or salary may be fixed by administrative action.

Act Dec. 16, 1967, Pub. L. 90–206, 81 Stat. 633, Title II, § 211(b), (c), (d), provided:

"(b) Notwithstanding section 3679 of the Revised Statutes, as amended (31 U.S.C. 665), the rates of pay of officers and employees of the Federal Government and of the municipal government of the District of Columbia whose rates of pay are fixed by administrative action pursuant to law and are not otherwise increased by this title are hereby authorized to be increased, effective on the effective date of section 202 of this title, by amounts not to exceed the increases provided by this title for corresponding rates of pay in the appropriate schedule or scale of pay.

"(c) Nothing contained in this section shall be held or considered to authorize any increase in the rates of pay of officers and employees whose rates of pay are fixed and adjusted from time to time as nearly as is consistent with the public interest in accordance with prevailing rates or practices.

"(d) Nothing contained in this section shall affect the authority contained in any law pursuant to which rates of pay may be fixed by administrative action."

SHORT TITLE

Section 101 of title I of act June 30, 1970, Pub. L. 91–297, provided:

"This title and title II of this Act [amending secs. 4–132a, 4–823, 4–829(c), 4–830, 4–832(a)(3), and 4–823d–1 (3), enacting secs. 4—130a and 4–823d–3, and enacting provisions set out as notes to secs. 4–521, 4–823, and 4–823d–1] may be cited as the 'District of Columbia Police and Firemen's Salary Act Amendments of 1970'."

Section 10 of act May 27, 1968, Pub. L. 90–320, provided: "This Act may be cited as the 'District of Columbia Police and Firemen's Salary Act Amendments of 1968' ". For amendments and enactments made by said Act, see Effective Date Note.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4–823, 4–823d–1, 4–823d–2, 4–823d–3, 4–832.

§ 4–823d. Adjustment of rates of basic compensation of officers and members to whom section 4–823, as amended by act Sept. 2, 1964, applies.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 823d–1.

§ 4–823d–1. Adjustment of rates of basic compensation of officers and members to whom section 4–823, as amended by act Nov. 13, 1966, applies—Dog handlers.

The rates of basic compensation of officers and members to whom the amendment made by section 101 of this title applies shall be adjusted in accordance with this section, and on and after the effective date of this title, section 4–823d shall not apply to any such officer or member whose rate of basic compensation is so adjusted in accordance with this section. Such rates of basic compensation shall be adjusted as follows:

(1) Except as otherwise provided in paragraph (2), (3), or (4), each officer and member receiving basic compensation immediately prior to the effective date of this title at one of the scheduled service or longevity rates of a class or subclass in the salary

schedule in section 4–823 shall receive a rate of basic compensation at the corresponding rate in effect on and after the effective date of this title.

(2) Each private in service step 6, longevity step 7, or longevity step 8 in any subclass in class 1, upon completing a minimum of nineteen years of continuous service as a private, including service in the Armed Forces of the United States but excluding any period of time determined not to have been satisfactory service, shall be advanced to longevity step 9 in class 1, and receive the appropriate scheduled rate of basic compensation for such step in the subclass in which he is serving.

(3) Each officer in longevity step 7 in class 5, 6, or 8, upon completing a minimum of fourteen years of continuous service in his respective class, including service in the Armed Forces of the United States but excluding any period of time determined not to have been satisfactory service, shall be advanced to longevity step 8 in his respective class, and receive the appropriate scheduled rate of basic compensation for such step in the class in which he was serving.

(4) Each officer or member of the Metropolitan Police force who is performing the duty of a dog handler on or after the effective date of this title shall receive in addition to his basic compensation an additional $580 per annum, except that if a police private is classed as technician II in subclass (c) of salary class (1) in the salary schedule in section 4–823 solely on account of his duties as a dog handler, such police private shall not be entitled to the additional compensation authorized by this paragraph. (Nov. 13, 1966, 80 Stat. 1592, Pub. L. 89–810, title I, § 102; June 30, 1970, Pub. L. 91–297, title I, § 110(a), 84 Stat. 357.)

REFERENCES IN TEXT

Words "section 101 of this title", as used in this section, refer to § 101 of title I of act Nov. 13, 1966, cited to the text of this section, which amended § 4–823.

Words "effective date of this title", as used in this section, refer to effective date of said title I of the act of Nov. 13, 1966, which in addition to enacting this section, amended §§ 4–823 and 4–829. See effective date note below.

AMENDMENT

1970—Par. (3). Amended by section 110(a) of act June 30, 1970, Pub. L. 91–297, by inserting ", 6, or" after "5".

EFFECTIVE DATE OF 1970 AMENDMENT

Section 110(b) of title I of act June 30, 1970, Pub. L. 91–297, provided: "The amendment made by this section [to par. (3) of this section] shall be effective only with respect to pay periods beginning on or after the effective date of this title." For effective date of such title, see note to sec. 4–823.

EFFECTIVE DATE

Section as effective on first day of first pay period beginning on or after July 1, 1966, see § 106 of act Nov. 13, 1966, Pub. L. 89–810, set out as a note under § 4–823.

§ 4–823d–2. Adjustment of rates of basic compensation of officers and members to whom section 4–823, as amended by act May 27, 1968, applies—Initial advancement to longevity steps.

(a) The rates of basic compensation of officers and members to whom the amendments made by the first section of this Act apply shall be adjusted as follows:

(1) Except as otherwise provided in subsection (b) of this section, each officer and member receiving basic compensation immediately prior to the first day of the first pay period which begins on or after October 1, 1967, at one of the scheduled service or longevity rate of a salary class or subclass of a salary class in the salary schedule in section 4–823 (hereafter in this section referred to as the "salary schedule") shall receive a rate of basic compensation at the corresponding rate in effect on such day.

(2) Each officer and member receiving basic compensation immediately prior to the first day of the first pay period which begins on or after July 1, 1968, at one of the scheduled service or longevity rates of a salary class or subclass of a salary class in the salary schedule shall receive a rate of basic compensation at the corresponding rate in effect on such day.

(b) Initial advancement to longevity steps shall be made, as of the effective date of this Act, in the following manner:

(1) An officer or member who was serving in salary class 1 immediately prior to such date and who on such date had completed at least 10 but less than 13 years of service as a private shall be advanced to longevity step A in such salary class and such service shall be credited to him for advancement to longevity step B in such salary class under section 4–832.

(2) An officer or member who was serving in salary class 1 immediately prior to such date and who on such date had completed at least 13 but less than 16 years of service as a private shall be advanced to longevity step B in such salary class and such service shall be credited to him for advancement to longevity step C in such salary class under section 4–832.

(3) An officer or member who was serving in salary class 1 immediately prior to such date and who on such date had completed at least 16 years of service as a private shall be advanced to longevity step C in such salary class.

(4) An officer or member who was serving in service step 4 of salary class 2, 3, or 4 immediately prior to such date and who on such date had completed at least 156 but less than 208 calendar weeks of continuous active service in such step in such salary class shall be advanced to longevity step A in such salary class and such service shall be credited to him for advancement to longevity step B in such salary class under section 4–832.

(5) An officer or member who was serving in longevity step 7 of salary class 2, 3, or 4 immediately prior to such date and who on such date had completed at least 156 but less than 208 calendar weeks of continuous service in such step in such salary class shall be advanced to longevity step B in such salary class and such service shall be credited to him for advancement to longevity step C in such salary class under section 4–832.

(6) An officer or member who was serving in longevity step 8 of salary class 2, 3, or 4 immediately prior to such date and who on such date had completed at least 156 calendar weeks of continuous active service in such step in such salary class shall be advanced to longevity step C in such salary class.

(7) An officer or member who was serving in service step 4 of salary class 5, 6, 7, 8, or 9 immediately prior to such date and who on such date had completed at least 156 but less than 208 calendar weeks of continuous active service in such step in such salary class shall be advanced to longevity step A in such salary class and such service shall be credited to him for advancement to longevity step B in such salary class under section 4–832.

(8) An officer or member who was serving in longevity step 7 of salary class 5, 6, 7, 8, or 9 immediately prior to such date and who on such date had completed at least 156 calendar weeks of continuous active service in such step in such salary class shall be advanced to longevity step B in such salary class.

Each such officer or member shall receive the appropriate scheduled rate of basic compensation for the longevity step to which he was advanced under this subsection. In computing the service of an officer or member for purposes of this subsection, only periods of satisfactory service as an officer or member and periods of satisfactory service in the Armed Forces of the United States shall be included. (May 27, 1968, Pub. L. 90–320, § 2, 82 Stat. 142.)

REFERENCE IN TEXT

The expression "to whom the amendments made by the first section of this Act apply", in subsec. (a) has reference to the Act of May 27, 1968, Pub. L. 90–320, which amended the salary schedules of sec. 4–823.

EFFECTIVE DATE OF PUB. L. 90–320

Section 9 of act May 27, 1968, provided:

"(a) Except as provided in subsection (b) of the first section (amendment of sec. 4–823) and in subsection (b) of this section (amendment of sec. 4–105), the effective date of this Act (amending secs. 4–105, 4–823, 4–832(a), enacting secs. 4–823d–2, and secs. 4, 5, 7 and 8 of this Act set out as notes to sec. 4–823) shall be the first day of the first pay period beginning on or after October 1, 1967.

"(b) The effective date of the amendment made by section 6 of this Act (sec. 4–105) shall be the date of the enactment of this Act." [May 27, 1968]

§ 4–823d–3. Adjustment of rates of basic compensation of officers and members to whom section 4–823, as amended by act June 30, 1970, applies.

The rates of basic compensation of officers and members to whom the amendments made by section 102 of this title apply shall be adjusted as follows: Each officer and member receiving basic compensation immediately prior to the effective date of this title at one of the scheduled service or longevity rates of a salary class or subclass in the salary schedule in section 4–823 shall receive a rate of basic compensation at the corresponding schedule service or longevity step in effect on and after the effective date of this title, except that:

(1) Each officer or member who immediately prior to the effective date of this title was assigned as technician I or plainclothesman in subclass (b) of salary class 1 or as technician II, station clerk, or motorcycle officer in subclass (c) of salary class 1 shall, on the effective date of this title, be assigned as and receive basic compensation as technician, plainclothesman, station clerk or motorcycle officer in subclass (b) of salary class 1 at the service step or longevity step in subclass (b) corresponding to that service step or longevity step in which he was serving immediately prior to the effective date of this title.

(2) Each officer or member who immediately prior to the effective date of this title was serving as a fire inspector assigned as technician I or technician II in subclass (b) or (c) of salary class 2 shall, on the effective date of this title, be placed and receive basic compensation as fire inspector assigned as technician in subclass (b) of salary class 2 at the service step or longevity step in subclass (b) corresponding to that service step or longevity step in which he was serving immediately prior to the effective date of this title.

(3) Each officer or member who immediately prior to the effective date of this title was serving in service step 1, 2, 3, or 4 of subclass (b) of salary class 9 shall, on the effective date of this title, be placed in and receive basic compensation in salary class 10 at the service step corresponding to that service step in which he was serving immediately prior to the effective date of this title. Each officer or member who immediately prior to the effective date of this title was serving in longevity step A or B of subclass (b) of salary class 9 shall, on the effective date of this title, be placed in and receive basic compensation in service step 4 of salary class 10.

(4) The Fire Chief and Chief of Police who immediately prior to the effective date of this title were serving in salary class 10 shall, on the effective date of this title, be placed in and receive basic compensation in salary class 11 and each shall be placed at the respective service step in which he was serving immediately prior to the effective date of this title.

(5) Each officer or member of the Metropolitan Police force and United States Park Police force who is performing the duty of a dog handler on or after the effective date of this title shall receive in addition to his basic compensation an additional $595 per annum, except that if a police private is classed as technician in subclass (b) of salary class 1 in the salary schedule in section 4–823 solely on account of his duties as dog handler, such police private shall not be entitled to the additional compensation authorized by this paragraph.

(June 30, 1970, Pub. L. 91–297, title I, § 103, 84 Stat. 355.)

REFERENCES IN TEXT

The expression "the amendments made by section 102 of this title "has reference to the amendment of sec. 4–823 made by section 102 of act June 30, 1970, Pub. L. 91–297.

The expression "the effective date of this title" has reference to the effective date of title I of Pub. L. 91–297.

EFFECTIVE DATE

Section as effective on the first day of the first pay period beginning on or after July 1, 1969, see § 112 of Pub. L. 91–297, set out as a note to sec. 4–823.

§ 4–824. Adjustment of salaries—Placement in salary classes and steps—Corresponding titles of step increases.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4–832.

§ 4–825. Positions to be included as Technician I.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–828. Authority to establish and determine, positions to be included as Technicians in Class 1 and 2 in section 4–823—Exception.

CHANGE OF NAME

The "White House Police force" was changed to "Executive Protective Service" by section 202 of act June 30, 1970, Pub. L. 91–297, 84 Stat. 358.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–829. Advancement in compensation after initial salary adjustment—Exception—Condition for advancement—Crediting of satisfactory service.

* * * * *

(c) Each officer and member serving in steps 1, 2, or 3 of Sub-Classes (a) or (b) of Class 1 shall be advanced in compensation successively to the next higher service step rate for his current Sub-Class at the beginning of the first pay period immediately subsequent to the completion of fifty-two calendar weeks of active service in his class if he has a current performance rating of "satisfactory" or better.

* * * * *

(As amended June 30, 1970, Pub. L. 91–297, title I, § 104, 84 Stat. 356.)

AMENDMENT

1970—Subsec. (c). Section 104 of Pub. L. 91–297 eliminated reference to Sub-Class "(c)" of Class I.

EFFECTIVE DATE OF 1970 AMENDMENT

See note to sec. 4–823.

§ 4–830. Promotion—Rate of basic compensation—Method of placement of an officer or member assigned or transferred to a Sub-Class.

Any officer or member who is promoted or transferred to a higher salary class or subclass of a higher salary class shall receive basic compensation at the lowest scheduled rate of such higher salary class or subclass which exceeds his existing rate of compensation by not less than one step increase of the next higher step of the salary class or subclass from which he is promoted or transferred. If the existing rate of compensation of an officer or member is above the maximum longevity step increase in the class from which he is promoted or transferred and there is no rate in the higher class to which he is promoted or transferred, which is at least one step increase above his existing rate, such officer or member shall receive the maximum longevity rate of such higher class or his existing rate, whichever is greater. Any officer or member in any class who is assigned or transferred to any Sub-Class within the same Class shall be placed in the same service or longevity step in such Sub-Class as that which he was in immediately prior to being so assigned or transferred. (Aug. 1, 1958, 72 Stat. 484, Pub. L. 85–584, title III, § 304; Oct. 24, 1962, 76 Stat. 1243, Pub. L. 87–882, § 3(c); June 30, 1970, Pub. L. 91–297, title I, § 105, 84 Stat. 356.)

AMENDMENTS

1970—Section 105 of act June 30, 1970, amended the first sentence of the section to read as set forth above.

1962—Section 3(c) of act Oct. 24, 1962, amended the section by adding the proviso clauses to the first sentence.

EFFECTIVE DATE OF 1970 AMENDMENT

See note to section 4–823.

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 4–823.

EFFECTIVE DATE

Section effective the first day of first pay period beginning after Jan. 1, 1958, see section 508(a) of act Aug. 1, 1958, set out as a note under section 4–823.

§ 4–831. Demotion—Rate of compensation.

CHANGE OF NAME

The "White House Police force" was changed to "Executive Protective Service" by section 202 of act June 30, 1970, Pub. L. 91–297, 84 Stat. 358.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–832. Longevity step increases—Conditions—Frequency of increases—Maximum increases—Date of beginning of step increases—Manner of crediting satisfactory service rendered prior to effective date of sections 4–823 and 4–824 to 4–837.

(a) In recognition of long and faithful service, each officer and member, except the Chief of Police and Fire Chief, shall receive an amount (to be known as a longevity step increase) in addition to the rate of compensation prescribed in the salary schedule in section 4–823 for the maximum scheduled service step in the subclass of the salary class in which he is serving, or for the salary class in which he is serving if there are no subclasses in his salary class, for each 156 calendar weeks of continuous service completed by him following the effective date of this subsection at such maximum rate or at a rate in excess thereof, without change to a higher salary class, subject to all of the following conditions:

(1) No officer or member shall receive more than one longevity step increase for any 156 calendar weeks of continuing service, and in order to be eligible therefor he shall have a current performance rating of 'satisfactory' or better.

(2) Not more than three successive longevity step increases may be granted to any officer or member in salary classes 1 through 4, nor more than two successive longevity step increases may be granted to any officer or member in salary classes 5 through 9.

(3) In the case of the officers or members serving in salary classes other than salary class 1, each longevity step increase shall be equal to one step increase of the salary class or subclass of a salary class in which the officer or member is serving.

(4) Each longevity step increase shall begin on the first day of the first pay period following completion of each 156 weeks.

* * * * *

(As amended May 27, 1968, Pub. L. 90–320, § 3, 82 Stat. 144; June 30, 1970, Pub. L. 91–297, title I, § 106, 84 Stat. 356.)

AMENDMENTS

1970—Subsec. (a)(3). Amended by section 106 of act June 30, 1970, Pub. L. 91–297, to read as above set out.

1968—Section 3 of act May 27, 1968, Pub. L. 90–320, amended subsection (a) to read as above set out. The amendments reduced from 208 weeks to 156 weeks of continuous service for granting a longevity step increase; excepted the Chief of Police and Fire Chief from the provisions of the sub-section; provided that no more than two successive longevity step increases may be granted to any officer or member in salary classes 5 to 9; eliminated the fcllowing from clause (2): "nor shall any officer or member be granted a longevity step increase above the maximum scheduled longevity step in the subclass in which he is serving or, if there are no subclasses in his class, in the class in which he is serving"; eliminated from clause (3) the following: "Each longevity step increase shall be equal to one step increase of the class or subclass in which the officer or member is serving," and substituted therefore "In the case of officers and members serving in salary class 1, each longevity step increase shall be equal to the increment between service step 4 and service step 5. In the case of officers or members serving in the other salary classes, each longevity step increase shall be equal to one step increase of the salary class or subclass of a salary class in which the officer or member is serving."

EFFECTIVE DATE OF 1970 AMENDMENT

See note to sec. 4–823.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 9 of act May 27, 1968, provided:

"(a) Except as provided in subsection (b) of the first section (amendment of sec. 4–823) and in subsection (b) of this section (amendment of sec. 4–105) the effective date of this Act (amending secs. 4–105, 4–823, 4–832(a), enacting secs. 4–832d–2, and secs. 4, 5, 7 and 8 of this Act set out as notes to sec. 4–823) shall be the first day of the first pay period beginning on or after October 1, 1967.

"(b) The effective date of the amendment made by section 6 of this Act (sec. 4–105) shall be the date of the enactment of this Act." [May 27, 1968]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4–823d–2.

§ 4–835. Commissioners authorized to promulgate regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(114) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 4–836. Retroactive salary—When and to whom payable.

CHANGE OF NAME

The "White House Police force" was changed to "Executive Protective Service" by section 202 of act June 30, 1970, Pub. L. 91–297, 84 Stat. 358.

§ 4–837. Delegation of authority by Commissioners, Secretary of Treasury and Secretary of Interior—Exception.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 4–832.

Chapter 9.—MISCELLANEOUS PROVISIONS

§ 4–901. Memorial fountain to members of Metropolitan police department.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 4–904. Establishment of workweek for officers and members of Metropolitan Police, United States Park Police and White House Police—Definitions—Compensatory time—Overtime pay.

CHANGE OF NAME

The "White House Police force" was changed to "Executive Protective Service" by section 202 of act June 30, 1970, Pub. L. 91–297, 84 Stat. 358.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§§ 4–905 to 4–909. Repealed. Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a).

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(115) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, regarding determination whether injury or disease resulted from the performance of duty, under section 4–909, subsection (b) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Section 4–909 to which this note relates was repealed and is now covered by section 5 U.S.C. 6324(b)(1).

TITLE 5.—BUILDING RESTRICTIONS AND REGULATIONS

Chapter 1.—ALLEY DWELLINGS

Sec.
5–117. Consolidation of low-rent public housing projects in the District of Columbia.

§ 5–104. Designation of the Authority—Powers—Approval of plans—Condemnation proceedings.

* * * * *

(b) In the event condemnation proceedings are required to carry out the provisions of sections 5–103 to 5–105 and 5–106 to 5–116 the same shall be conducted in accordance with the provisions of chapter 13 of title 16 of the District of Columbia Code.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, § 166(a), title I, 84 Stat. 587.)

AMENDMENT

1970—Section 166(a) of Act July 29, 1970, Public Law 91–358 amended subsection (b) by striking out "the Act entitled 'An Act to provide for the acquisition of land in the District of Columbia for the use of the United States', approved March 1, 1929" and inserting in lieu thereof "chapter 13 of title 16 of the District of Columbia Code".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

PRESIDENTIAL EXECUTIVE ORDER 11571

MODIFYING EXECUTIVE ORDER NO. 6868 OF OCTOBER 9, 1934, AS AMENDED, DESIGNATING THE AUTHORITY TO CARRY OUT THE PROVISIONS OF THE DISTRICT OF COLUMBIA ALLEY DWELLING ACT

Ex. Ord. No. 11571, Dec. 8, 1970, 35 F.R. 18717, provided:

By virtue of the authority vested in me by the District of Columbia Alley Dwelling Act, as amended (D.C. Code, Sec. 5–103 to 5–116, inclusive), I hereby designate the Commissioner of the District of Columbia as the Authority to carry out the provisions of the said Act. Such Authority shall be deemed a continuation of the Authority heretofore designated under Executive Order No. 6868 of October 9, 1934, as amended. In carrying out his functions as such Authority, the Commissioner shall be known as the "National Capital Housing Authority".

The Assistant to the Commissioner of the District of Columbia or the Commissioner's Assistant for Housing Programs, in such sequence and to such extent as the Commissioner may direct, may act for the Commissioner in carrying out the functions of the Authority. During the absence or disability of the Commissioner or in the event of a vacancy in the office of Commissioner, the Assistant to the Commissioner of the District of Columbia or the Commissioner's Assistant for Housing Programs, in such sequence as the Commissioner may direct, shall act as the Authority.

Executive Order No. 6868 of October 9, 1934, as amended by Executive Orders Nos. 7784–A of January 5, 1938, 8033 of January 11, 1939, 9344 of May 21, 1943, 9916 of December 31, 1947, 10128 of June 2, 1950, and 11401 of March 13, 1968, is modified to the extent provided herein.

PRESIDENTIAL EXECUTIVE ORDER 11401

MODIFYING EXECUTIVE ORDER NO. 6868 OF OCTOBER 9, 1934, AS AMENDED, DESIGNATING THE AUTHORITY TO CARRY OUT THE PROVISIONS OF THE DISTRICT OF COLUMBIA ALLEY DWELLING ACT

Ex. Ord. No. 11401, Mar. 13, 1968, 33 F.R. 4559 provided:

By virtue of the authority vested in me by the District of Columbia Alley Dwelling Act, as amended (D.C. Code, §§ 5–103 to 5–116, inclusive), I hereby designate the Commissioner of the District of Columbia as the Authority to carry out the provisions of the said Act. Such Authority shall be deemed a continuation of the Authority heretofore designated under Executive Order No. 6868 of October 9, 1934, as amended. In carrying out his functions as such Authority, the Commissioner shall be known as the "National Capital Housing Authority".

The Assistant to the Commissioner of the District of Columbia shall, to the extent the Commissioner may direct, act for him in carrying out the functions of the Authority, and, during the absence or disability of the Commissioner or in the event of a vacancy in the office of Commissioner, the Assistant to the Commissioner shall act as the Authority.

Executive Order No. 6868 of October 9, 1934, as amended by Executive Orders Nos. 7784–A of January 5, 1938, 8033 of January 11, 1939, 9344 of May 21, 1943, 9916 of December 31, 1947, and 10128 of June 2, 1950, is modified to the extent provided herein.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Evidence

Evidence in action for declaratory relief with respect to rights of grantor and grantees of quitclaim deed in and to two alleys situated in District of Columbia did not establish that alleys were, in fact, owned by the District of Columbia. *S. S. Zlotnick et ano.* v. *J. I. Benders & Sons, Inc.* (1968, 285 F. Supp. 548).

Evidence in action to determine rights in alleys established that defendant had trespassed on alley "B" and obstructed alley "A" in manner as to seriously interfere with plaintiffs' rights and in open and complete disregard of plaintiffs' rights. *Id.*

Injunction

Where neither plaintiffs nor defendant could permanently obstruct alley without permission of the other, injunction would issue to require defendant to remove concrete step from alley. *S. S. Zlotnick et ano.* v. *J. I. Benders & Sons, Inc.* (1968, 285 F. Supp. 548).

Where grantees had acquired all of grantor's right, title and interest in and to an easement in an alley and grantor had not established prescriptive easement to maintain air shaft into alley, District Court would issue specific injunction to grantor to remove air shaft and to prohibit doors of grantor's building opening outwards into alley without express written permission of grantees. *Id.*

Parties in interest

Where District of Columbia was not party to action to determine rights of grantor and grantees of quitclaim deed to alley, decree would not be binding upon District of Columbia. *S. S. Zlotnick et ano.* v. *J. I. Benders & Sons, Inc.* (1968, 285 F. Supp. 548.)

§ 5–116. Loans authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–117. Consolidation of low-rent public housing projects in the District of Columbia.

All projects now operated and maintained by the National Capital Housing Authority pursuant to sections 5–103 to 5–111 are deemed to be low-rent housing projects and may be consolidated, pursuant

to section 1415(6) of title 42 U.S. Code, into any contract for annual contributions covering projects maintained and operated pursuant to sections 5–112 to 5–116. (Aug. 1, 1968, Pub. L. 90–448, § 1711, title XVII, 82 Stat. 607.)

Chapter 2.—BUILDING LINES

§ 5–201. Building lines established on streets less than 90 feet wide.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–202. Condemnation proceedings to be instituted.

Upon the filing of such plat and petition in the office of said commissioners, or when the commissioners shall deem that the public interests require it, the said commissioners shall institute condemnation proceedings in the Superior Court of the District of Columbia, by a petition in rem, particularly describing the land to be taken, which petition shall be accompanied by duplicate plats, to be prepared by the surveyor of said District, showing the location of said proposed building lines, the number of square feet to be taken from each lot or part of lot and the boundaries thereof in each square or block, and such other information as may be necessary for the purposes of such condemnation. Upon the filing of such petition, one copy of the plat, indorsed with the docket number of the case, shall be returned by the clerk of said court to the said surveyor for record in his office. (June 21, 1906, 34 Stat. 384, ch. 3505, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(15), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(15) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–204. Permits for extensions of buildings beyond building line.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7–905.

§ 5–205. Existing buildings may project beyond established building line—Commissioners to have control of parkings.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(116) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section regarding the care and preservation of parkings, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 3.—FIRE ESCAPES AND SAFETY PROVISIONS

§ 5–301. Fire escapes required on certain structures—Exceptions.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(117) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to numbers and material, type, and construction of fire escapes, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5–311.

§ 5–302. Fire escapes—Stairways—Hall and stair lights required on certain structures.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–303. When ten or more persons employed, fire escapes and other safety measures required.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–304. Alterations may be required to locate fire escapes or add additional ones.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(118) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 5–308. Penalty for violations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–309. Notice, what to contain.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–310. Notice, when deemed served—Fire escapes and other safety appliances may be provided by commissioners, when owner neglects—Costs to be lien on property.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–311. Use of premises may be enjoined if not properly equipped with safety devices.

The Superior Court of the District of Columbia in term time or in vacation, may, upon a petition

of the District of Columbia, filed by its commissioners, issue an injunction to restrain the use or occupation of any building in the District of Columbia in violation of any of the provisions of sections 5–301 to 5–312. (Mar. 19, 1906, 34 Stat. 72, ch. 957, § 11; June 4, 1934, 48 Stat. 846, ch. 388; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(16), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(16) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–312. Definitions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5–311.

§ 5–313. Upon failure of owner to correct condition violative of law, commissioner may do so—Cost of correction, lien on property—Owner not relieved from criminal responsibility.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Utilities

Since the municipality shared heavy responsibility for conditions that brought about nuisance occurring when hundreds of residents of apartment complex, already living a marginal existence in substandard housing, were faced with a cut off of water, gas and electricity, the municipality must provide water free of charge to tenants and enter into contracts with gas and electric utilities to provide services, pendente lite, free of charge to tenants but it may recoup any money expended by assessing tax against property or by levying fines against owner. *A. Masszonva* v. *W. E. Washington, Commissioner, et al* (1970, 315 F. Supp. 529).

§ 5–314. Authorities permitted to enter property to inspect and correct wrongful conditions—Unlawful to interfere with inspection or correction—Penalty.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–315. Notice to correct wrongful conditions—How given—Methods of service—Required contents.

NOTES TO DECISIONS

Utilities

Since the municipality shared heavy responsibility for conditions that brought about nuisance, occurring when hundreds of residents of apartment complex, already living a marginal existence in substandard housing, were faced with a cut off of water, gas and electricity, the municipality must provide water free of charge to tenants and enter into contracts with gas and electric utilities to provide services, pendente lite, free of charge to tenants but it may recoup any money expended by assessing tax against property or by levying fines against owner. *A. Masszonva* v. *W. E. Washington, Commissioner, et al* (1970, 315 F. Supp. 529).

§ 5–316. Commissioners of the District of Columbia may prescribe fees for inspection of certain buildings—Schedule of fees to be displayed—Fees deposited in treasury.

The Commissioners of the District of Columbia are authorized and directed, from time to time, to prescribe a schedule of fees to be paid for inspecting passenger elevators an for inspecting hotels, public halls, moving-picture shows, theaters, and other places of amusement which are required to have annual licenses, and for inspecting buildings which are required by law to have fire escapes; and they are further authorized and directed to impose fees for all inspections of service to be performed by any public officer or employee of the District of Columbia under any law or regulation in force July 11, 1919, or thereafter enacted; said fees to cover the cost and expense of such inspections or service; and a schedule of such fees shall be printed and conspicuously displayed in the office of the said commissioners, and said fees shall be paid to the collector of taxes, District of Columbia, and paid for each fiscal year into the treasury of the United States to the credit of the general fund of the District of Columbia. Notwithstanding the provisions of the preceding sentence and section 7 of the Act of February 22, 1921 (41 Stat. 1144), in the case of a single unit motor vehicle which has three or more axles and is designed to unload itself and which is operated in the District of Columbia under an annual hauling permit of the District of Columbia, the fee for such permit shall be as follows:

(1) $680 if such motor vehicle is first placed in service after July 1, 1970.

(2) If such motor vehicle is in service on or before July 1, 1970, and operated at a gross weight—

(A) in excess of the weight permitted under normal operations under applicable regulations of the Commissioner of the District of Columbia but less than 50,000 pounds, a fee of $380;

(B) of 50,000 pounds or more but less than 55,000 pounds, a fee of $480;

(C) of 55,000 pounds or more but less than 60,000 pounds, a fee of $580; or

(D) of 60,000 pounds or more, not to exceed 65,000 pounds, a fee of $680.

The Commissoner of the District of Columbia is authorized to increase, from time to time, the fees prescribed by paragraphs (1) and (2), taking into account expenditures for the purpose of repairing or replacing highway structures and roadway pavements requiring such repair or replacement as a result of the operation of the motor vehicles for which hauling permit fees are prescribed under the preceding sentence. Proceeds from fees from annual hauling permits for such vehicles shall be deposited in the highway fund created by section 47–1901. (July 11, 1919, 41 Stat. 69, ch. 7; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; June 28, 1944, ch. 300, § 18, 58 Stat. 533; Jan. 5, 1971, Pub. L. 91–650, title I, § 104(a), 84 Stat. 1930.)

REFERENCE IN TEXT

The exception from section 7 of the Act of February 22, 1921 (41 Stat. 1144), referred to in text, appears to be superfluous in view of section 18 of Act June 28, 1944

(classified to § 47–130a) and of the last sentence providing that the proceeds of such fees shall be deposited in the highway fund.

CODIFICATION

Act July 11, 1919, provided that the fees paid to the collector of taxes should be deposited in the Treasury of the United States to the credit of the revenues of the District of Columbia and the United States in equal parts. Section 7 of Act February 22, 1921, provided that "on and after July 1, 1921, all fees, fines, and other miscellaneous items of revenue theretofore required by law to be paid into the Treasury of the United States to the credit of the United States and the District of Columbia in equal parts shall be paid for each fiscal year into the Treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the Treasury of the United States and the revenues of the District of Columbia." Section 18 of Act June 28, 1944, provided: "Any revenue now required by law to be credited to the District of Columbia and the United States in the proportion that each contributed to the activity or source from whence such revenue was derived shall be credited wholly to the general fund of the District of Columbia." For this reason, the original text was modified accordingly.

AMENDMENT

1971—Section 104(a) of Act Jan. 5, 1971, Pub. L. 91–650, inserted last three sentences to read as above set out.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 104(b) of Act Jan. 5, 1971, Pub. L. 91–650, provided: "The amendment made by subsection (a) [amending § 5–316] shall take effect on the ninetieth day following the date of enactment of this Act."

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of Act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

The Office of the Collector of Taxes was abolished and the functions thereof transferred to the Board of Commissioners of the District of Columbia by sections 1 and 2(a) of Reorg. Plan No. 5, 1952, set out in the appendix to title 1.

§ 5–317. Means of egress and fire safety appliances required in certain public buildings.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(119) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5–323, 47–2302.

§ 5–318. Same—Occupancy prohibited after notice of noncompliance.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2302.

§ 5–319. Same—Notice to owner requiring installation—Time for compliance.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2302.

§ 5–320. Same—Penalty for noncompliance.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2302.

§ 5–321. Same—Service of notice.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2302.

§ 5–322. Same—Construction and installation by Commissioners on owner's noncompliance—Assessment of costs against buildings.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5–323, 47–2302.

§ 5–323. Same—Injunction against unlawful use or occupation of building.

The Superior Court of the District of Columbia, in term time or in vacation, may upon a petition of the District of Columbia field by its said Commissioners, issue an injunction to restrain the use or occupation of any building in the District of Columbia in violation of any of the provisions of sections 5–317 to 5–323 or of the regulations promulgated under sections 5–317 to 5–323 by the owner, lessee, or occupant. (Dec. 24, 1942, 56 Stat. 1085, ch. 818, § 7; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(17), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(17) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2302.

Chapter 4.—ZONING AND HEIGHT OF BUILDINGS

§ 5–401. Height of certain nonfireproof dwellings limited.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5–408.

§ 5–404. Additions—Towers, spires, and domes—Theaters.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–405. Width of street to govern height—Business streets—Residence streets—Corner lots—Fireproof requirements—Dean Tract—Restrictions and limitations applicable to specific property.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(120) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the extent provided in par. 120, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 5–408. Violations declared nuisance—Injunction proceedings—Penalty for contempt.

Buildings erected, altered, or raised or converted in violation of any of the provisions of sections 5–401 to 5–409 are hereby declared to be common nuisances; and the owner or the person in charge of or maintaining any such buildings, upon conviction on information filed in the Superior Court of the District of Columbia by the corporation counsel or any of his assistants in the name of said District, and which said court is hereby authorized to hear and determine such cases, shall be adjudged guilty of maintaining a common nuisance, and shall be punished by a fine of not less than $10 nor more than $100 per day for each and every day such nuisance shall be permitted to continue, and shall be required by said court to abate such nuisance. The corporation counsel of the District of Columbia may maintain an action in the Superior Court of the District of Columbia in the name of the District of Columbia, to abate and perpetually enjoin such nuisance. The injunction shall be granted at the commencement of the action, and no bond shall be required. Any person violating the terms of any injunction granted in such proceeding shall be punished as for contempt by a fine of not less than $100 nor more than $500, or by imprisonment in the Washington Asylum and Jail for not less than thirty days nor more than six months, or by both such fine and imprisonment, in the discretion of the court. (June 1, 1910, 36 Stat. 454, ch. 263, § 8; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), (c)(18), 84 Stat. 570, 571.

AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended the first sentence by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

Section 155(c)(18) of Act July 29, 1970, Public Law 91–358, amended the second sentence by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF AMENDMENTS

See note preceding section 11–101.

§ 5–409. Right to alter or repeal reserved.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5–408.

§ 5–410. Applications for erection or alteration of buildings fronting on certain government property to be submitted to Commission of Fine Arts.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7–905, 7–944 and 7–951.

§ 5–411. Plats of restricted area to be prepared.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(121) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7–905, 7–944 and 7–951.

§ 5–412. Zoning Commission created—Membership—Assignment of employees.

TRANSFER OF FUNCTIONS WITH RESPECT TO ZONING COMMISSION

Section 404 of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"Zoning Commission functions of the members of the Board of Commissioners of the District of Columbia with respect to serving as members of the Zoning Commission (D.C. Code, sec. 5–412) are hereby transferred as follows:

"(a) Those of the President of the Board of Commissioners are transferred to the Chairman of the District of Columbia Council.

"(b) Those of the Engineer Commissioner are transferred to the Commissioner of the District of Columbia.

"(c) Those of the other member of the Board of Commissioners are transferred to the Vice Chairman of the Council."

TRANSFER OF FUNCTIONS OF THE BOARD OF COMMISSIONERS

Section 501 of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"*Status of certain agencies.* (a) Functions now vested in any agency listed in subsection (b) of this section, or in any officer or body of or under such agency, shall remain so vested; but all functions of the Board of Commissioners of the District of Columbia and all functions of the President of that Board or of any other member of the Board, relating to the listed agency or its functions or to an officer or body thereof or to the functions of such officer or body shall be deemed to be transferred by Part IV of this reorganization plan.

"(b) The following agencies of the Corporation are the agencies referred to in subsection (a) of this section:

"(1) Board of Education (including the public school system).
"(2) Board of Library Trustees (including the public libraries).
"(3) Recreation Board.
"(4) Public Service Commission.
"(5) Zoning Commission.
"(6) Zoning Advisory Council.
"(7) Board of Zoning Adjustment.
"(8) Office of the Recorder of Deeds.
"(9) Armory Board."

§ 5–415. Existing zoning regulations continued until amended—Public hearing on amendments—Notice—Contents.

NOTES TO DECISIONS

Classification

Validity of zoning classification, excluding high-rise construction, is not impaired by fact that classification

adopted was not proposed in notice for hearing, while high-rise classification was proposed, where it did not appear that subject of the change was not aired at hearing, and zoning commission's reason for adopting exclusionary classification was unlikelihood that high-rise construction was then needed, and objecting party's predecessor, who owned property at time of zoning, did not object over period of years. *S. J. Gerstenfeld* v. *T. S. Jett et al.* (1967, 374 F. 2d 333, 126 U.S. App. D.C. 119).

§ 5–417. Zoning Advisory Council—Creation—Membership—Submission of amendments to zoning regulations.

TRANSFER OF FUNCTIONS OF THE BOARD OF COMMISSIONERS

Section 501 of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"Status of certain agencies. (a) Functions now vested in any agency listed in subsection (b) of this section, or in any officer or body of or under such agency, shall remain so vested; but all functions of the Board of Commissioners of the District of Columbia and all functions of the President of that Board or of any other member of the Board, relating to the listed agency or its functions or to an officer or body thereof or to the functions of such officer or body shall be deemed to be transferred by Part IV of this reorganization plan.

"(b) The following agencies of the Corporation are the agencies referred to in subsection (a) of this section:

"(1) Board of Education (including the public school system)
"(2) Board of Library Trustees (including the public libraries)
"(3) Recreation Board
"(4) Public Service Commission
"(5) Zoning Commission
"(6) Zoning Advisory Council
"(7) Board of Zoning Adjustment
"(8) Office of the Recorder of Deeds
"(9) Armory Board"

§ 5–418a. Continued use and maintenance of existing chanceries—Construction, reconstruction, expansion or alterations in accordance with permits issued on or before February 18, 1964.

Nothing in the amendments made by section 5–418 shall prohibit—

(1) the future or continued use of a building as a chancery or the making of ordinary repairs to any such building (A) for which negotiations had been entered into with a foreign government before October 13, 1964 to sell such building for use as a chancery, which negotiations resulted in the making of a contract on or before June 1, 1965, with such government to sell such building for such use or (B) for which lawful use as a chancery existed on October 13, 1964, or

(2) the construction, reconstruction, expansion, or alteration in accordance with any permit issued by the Board of Commissioners of the District of Columbia on or before February 18, 1964, of any building used or to be used as a chancery.

(Oct. 13, 1964, 78 Stat. 1092, Pub. L. 88–659, § 2; July 21, 1968, Pub. L. 90–412, § 1(a) 82 Stat. 396.)

AMENDMENT

1968—Section 1(a) of act July 21, 1968, Pub. L. 90–412, amended par. (1) by inserting the clause beginning with (A) and ending with (B).

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–418c. Transfer or use of chanceries contrary to provisions of section 5–418 (a) to (e)—Exception.

After October 13, 1964, no building or chancery being used by a foreign government in the District of Columbia shall be transferred to or used by another foreign government unless such use is in accordance with section 5–418, as amended, or paragraph (1) of section 5–418a or unless such use was in accordance with applicable law at the time of this enactment. (Oct. 13, 1964, 78 Stat. 1092, Pub. L. 88–659, § 4; July 21, 1968, Pub. L. 90–412, § 1(b), 82 Stat. 396.)

AMENDMENT

1968—Section 1(b) of act July 21, 1968, Pub. L. 90–412, amended section by inserting after "section 5–418, as amended" the phrase "or paragraph (1) of section 5–418a."

§ 5–419. Use of existing buildings—Restrictions—Discretion of Zoning Commission—Extension of use.

NOTES TO DECISIONS

Construction

"Nonconforming use," within this section refers to permitted continued use of structure for purpose lawful under zoning at time of initiation of that use but not so under subsequently adopted changes in zoning. *Massachusetts Avenue Heights Citizens Association* v. *Embassy Corporation* (1970, 433 F. 2d 513, — U.S. App. D.C. —).

§ 5–420. Board of Zoning Adjustment—Creation, membership—Tenure—Regulations to govern organization and procedure—Appeal—Procedure, powers—Majority vote necessary.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS OF THE BOARD OF COMMISSIONERS

Section 501 of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"Status of certain agencies. (a) Functions now vested in any agency listed in subsection (b) of this section, or in any officer or body of or under such agency, shall remain so vested; but all functions of the Board of Commissioners of the District of Columbia and all functions of the President of that Board or of any other member of the Board, relating to the listed agency or its functions or to an officer or body thereof or to the functions of such officer or body shall be deemed to be transferred by Part IV of this reorganization plan.

"(b) The following agencies of the Corporation are the agencies referred to in subsection (a) of this section:

"(1) Board of Education (including the public school system)
"(2) Board of Library Trustees (including the public libraries)
"(3) Recreation Board
"(4) Public Service Commission
"(5) Zoning Commission
"(6) Zoning Advisory Council
"(7) Board of Zoning Adjustment
"(8) Office of the Recorder of Deeds
"(9) Armory Board"

NOTES TO DECISIONS

Exception

A party aggrieved by a classification of District of Columbia Zoning Commission may be able to seek special exception before Board of Zoning Adjustment. *S. J. Gerstenfeld* v. *T. S. Jett et al.* (1967, 374 F. 2d 333, 126 U.S. App. D.C. 119).

§ 5–421. Maps and regulations of Zoning Commission—To be filed—Published.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–422. Building permits—Construction without obtaining—Certificates of occupancy—Use without obtaining—Construction in violation of regulations—Enforcement—Actions, parties—Penalty.

It shall be unlawful to erect, construct, reconstruct, convert, or alter any building or structure or part thereof within the District of Columbia without obtaining a building permit from the inspector of buildings, and said inspector shall not issue any permit for the erection, construction, reconstruction, conversion, or alteration of any building or structure, or any part thereof, unless the plans of and for the proposed erection, construction, reconstruction, conversion, or alteration fully conform to the provisions of sections 5–413 to 5–428 and of the regulations adopted under said sections. In the event that said regulations provide for the issuance of certificates of occupancy or other form of permit to use, it shall be unlawful to use any building, structure, or land until such certificate or permit be first obtained. It shall be unlawful to erect, construct, reconstruct, alter, convert, or maintain or to use any building, structure, or part thereof or any land within the District of Columbia in violation of the provisions of said sections or of any of the provisions of the regulations adopted under said sections. The owner or person in charge of or maintaining any such building or land or any other person who erects, constructs, reconstructs, alters, converts, maintains, or uses any building or structure or part thereof or land in violation of said sections or of any regulation adopted under said sections, shall upon conviction for such violation on information filed in the Superior Court of the District of Columbia by the corporation counsel or any of his assistants in the name of said District and which court is hereby authorized to hear and determine such cases be punished by a fine of not more than $100 per day for each and every day such violation shall continue. The corporation counsel of the District of Columbia or any neighboring property-owner or occupant who would be specially damaged by any such violation may, in addition to all other remedies provided by law, institute injunction, mandamus, or other appropriate action or proceeding to prevent such unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate such violation or to prevent the occupancy of such building, structure, or land. (June 20, 1938, 52 Stat. 800, ch. 534, § 10; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS

See note under section 5–314 concerning the Department of Licenses and Inspections.

CROSS REFERENCES

Certain applications for building permits required to be submitted to Commissioners and Commission of Fine Arts in certain cases, see §§ 5–410, 5–411.

Fees for permits, see §§ 5–429, 5–430.

Powers of assistant inspector of buildings, see § 1–728.

§ 5–423. Enforcement of regulations—Power to adopt municipal regulations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–426. Appropriations authorized for Zoning Commission—Authority to employ—Compensation of Board of Zoning Adjustment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–428. Federal public buildings excepted.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7–951.

§ 5–429. Commissioners of the District of Columbia to prescribe fees for permits, certificates, and transcripts by inspector of buildings—Schedule of fees to be displayed.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 5.—UNSAFE STRUCTURES

§ 5–501. Structure reported unsafe, to be examined by Commissioners—If unsafe, notice to be given to make same secure—If safety requires, Commissioners may make secure.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–502. If dangers not remedied, premises to be surveyed by three disinterested persons—Report.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–503. Commissioners to make structure safe if responsible person does not—Owners or other interested persons not to interfere with Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–504. Nuisances to be abated—Notice given—Cost a lien on property—Penalty—Prosecution.

(a) The existence on any lot or parcel of land, in the District of Columbia, of any uncovered well, cistern, dangerous hole, excavation, any dead, dangerous or diseased tree, or part thereof, or of any abandoned vehicles of any description or parts thereof, miscellaneous materials or debris of any kind, including substances that have accumulated as the result of repairs to yards or any building operations, insofar as they affect the public health, comfort, safety, and welfare is hereby declared a nuisance dangerous to life and limb, and any person, corporation, partnership, syndicate, or company, owning a lot or parcel of land in said District on which such a nuisance exists who shall neglect or refuse to abate the same to the satisfaction of the Commissioners of the District of Columbia, after five

days' notice from them to do so, shall, on conviction in the Superior Court of the District of Columbia be punished by a fine of not exceeding $50 for each and every day said person, corporation, partnership, or syndicate, fails to comply with such notice. In case the owner of, or agent or other party interested in, any lot or parcel of land in the District of Columbia, on which there exists an open well, cistern, dangerous hole, or excavation, or any dead, dangerous, or diseased tree or part thereof, or any abandoned or unused vehicles or parts thereof, or miscellaneous accumulation of material or debris which affects public safety, health, comfort, and welfare, shall fail, after notice aforesaid, to abate said nuisance within one week after the expiration of such notice, the said commissioners may cause the lot or parcel of land on which the nuisance exists to be secured by fences or otherwise enclosed, and the removal of any abandoned vehicles, or parts thereof, any miscellaneous accumulation of material or debris or any dead or dangerous tree or part thereof, or the removal or spraying of any diseased tree adversely affecting the public safety, health, comfort, and welfare, and the cost and expense thereof shall be assessed by said commissioners as a tax against the property on which such nuisance exists, and the tax so assessed shall be collected in the manner provided in section 5–506. Within the meaning of this section, a dead tree shall be any tree with respect to which the Commissioners of the District of Columbia or their designated agent have determined that no part thereof is living; a dangerous tree is any tree or part thereof, living or dead, which the said Commissioners or their designated agent shall find is in such condition and is so located as to constitute a danger to persons or property on public space in the vicinity of such tree; and a diseased tree shall be any tree on private property in such a condition of infection from a major pathogenic disease as to constitute, in the opinion of the said Commissioners or their designated agent, a threat to the health of any other tree.

(b) The authority conferred on the Commissioners under subsection (a) with respect to the removal of dangerous and diseased trees constituting a nuisance shall be exercised by the Commissioners only after every reasonable effort has been made to abate such nuisance other than by the removal of any such tree, or part thereof. (Mar. 1, 1899, 30 Stat. 923, ch. 323, § 4; Apr. 5, 1935, 49 Stat. 107, ch. 41; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; Aug. 22, 1964, 78 Stat. 599, Pub. L. 88–466, § 4; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (a) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–505. Costs and expenses of removing nuisances to be determined by Commissioners and assessed against the property—Penalty for violation of sections 5–501 to 5–503.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–506. Payment and collection of costs and expenses—Interest—Sale of property for nonpayment after two years.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5–504, 7–949.

§ 5–508. Structures found to be unsafe—Notice to owners and occupants—Use of unsafe structures may be prohibited—Penalty for violation of Commissioners order.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 6.—INSANITARY BUILDINGS

Sec.
5–629. Appeal from order—Superior Court—Modification or revocation by court.

§ 5–616. Inspection by Commissioners—Condemnation—Delegation of authority.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–617. Board for the Condemnation of Insanitary Buildings—Condemnation Review Board—Members—Procedure.

ORDER ESTABLISHING BOARD FOR THE CONDEMNATION OF INSANITARY BUILDINGS

Organization Order No. 102, 54–2034, Sept. 27, 1954, as amended Mar. 18, 1958, June 10, 1958, May 26, 1960, July 5, 1960, Mar. 23, 1970, and May 25, 1970, provided as follows:

BOARD FOR THE CONDEMNATION OF INSANITARY BUILDINGS

Pursuant to the authority contained in Public Law 681, 83rd Congress, it is hereby ordered:

PART I

Board for the Condemnation of Insanitary Buildings.—

* * * * *

B. The Board for the Condemnation of Insanitary Buildings shall consist of five members each of whom shall serve at the pleasure of the Commissioner of the District of Columbia or until his successor is appointed: a representative of the Department of Economic Development, who shall serve as Chairman; a representative of the Assistant to the Commissioner for Housing Programs; two representatives of the Department of Human Resources, and a representative of the Department of Sanitary Engineering.

* * * * *

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–618. Condemnation procedure—Notice—Order—Remedial action by owner—Occupancy of condemned buildings.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5–631.

§ 5–619. Occupancy of condemned building.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5–631.

§ 5–620. Repairs or changes—Demolition—District of Columbia Building Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5–631.

§ 5–622. Owner's failure to comply with order—Repair or demolition by Board for the Condemnation of Insanitary Buildings—Payments of costs—Effect of appeal.

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5–631.

§ 5–623. Litigation involving title to property—Notice—Report to Commissioners—Court order.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–624. Infant owner—Person non compos mentis—Appointment of guardian.

Whenever the title to any building or part of building is vested in a person non compos mentis, or a minor child or minor children without legal guardian, the Board for the Condemnation of Insanitary Buildings shall report that fact to the Commissioners of the District of Columbia, who shall take due legal steps to secure the appointment of a guardian or guardians for such person non compos mentis, or minor child or children aforesaid, for the purpose of the condemnation proceedings authorized by sections 5–616 to 5–634, and any judge of the court having probate jurisdiction is hereby authorized to appoint a guardian or guardians for such purpose. (May 1, 1906, 34 Stat. 159, ch. 2073, § 9, as amended Aug. 28, 1954, 68 Stat. 887, ch. 1032; July 29, 1970, Pub. L. 91–358, title 1, § 158(e), 84 Stat. 577.)

AMENDMENT

1970—Section 158(e) of Act July 29, 1970, Public Law 91–358 amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–626. Interference with work or inspection.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5–631.

§ 5–627. Destruction, removal or concealment of copy of order affixed to building.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5–631.

§ 5–628. Review of order—Application to Condemnation Review Board—Fee.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–629. Appeal from order—Superior Court—Modification or vacation by court.

The owner of any building or part of building condemned under the provisions of sections 5–616 to 5–634 may, within fifteen days from the date on which such owner receives notice that such order of condemnation has been reviewed by the Condemnation Review Board established in accordance with section 5–617 and has been affirmed or modified by such Board, appeal to the Superior Court of the District of Columbia for the modification or vacation of said order of condemnation. The Superior Court of the District of Columbia shall give precedence to any such case, shall hear the testimony adduced therein, shall view the building or part of building affected by said order of condemnation, and thereafter shall affirm, modify, or vacate said order. In any proceeding instituted in accordance with the provisions of this subsection, such proceeding shall be conducted by the judge only, and nothing herein contained shall be construed as authorizing or entitling the owner of property affected by such order of condemnation to a trial by jury. (May 1, 1906, 34 Stat. 160, ch. 2073, § 14, as amended Aug. 28, 1954, 68 Stat. 888, ch. 1032; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5–617, 5–619 to 5–622, 5–624, 5–626, 5–628, 5–632 to 5–634.

§ 5–630. Neglect by tenants or occupants of building.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5–631.

§ 5–631. Penalties.

Any person violating or aiding or abetting in violating sections 5–618, 5–619, 5–620, 5–622, 5–626, 5–627, or 5–630 shall, upon conviction thereof in the Superior Court of the District of Columbia, upon information filed in the name of said District, be punished by a fine of not more than $100 or by imprisonment for not more than ninety days; and each day on which such unlawful act is done or during which such unlawful negligence continues shall constitute a separate and distinct offense. (May 1, 1906, 34 Stat. 161, ch. 2073, § 16, as added Aug. 28, 1954, 68 Stat. 889, ch. 1032; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 5–633. Definitions—"Commissioners"—"Owner".

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–634. Suits and proceedings under prior law—Time limits.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 7.—HOUSING REDEVELOPMENT

Sec.
5–719a. Neighborhood development programs.
5–723. Same; Agency authorized to lease property—Limitations on other transfers—No transfer of funds required if property is acquired by District or Agency of United States—Owners of displaced business concerns to have priority in leasing privileges—Notification—Rent formula—Residual value of land.
5–732a. Relocation payments and assistance—Persons displaced by public works programs and projects of District Government and of Washington Metropolitan Area Transit Authority.

§ 5–702. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–703. Establishment and powers of the Agency.

TRANSFER OF CERTAIN FUNCTIONS TO COMMISSIONER OF DISTRICT OF COLUMBIA

Sections 1 and 2 of Reorganization Plan No. 4 of 1968, effective May 23, 1968, provide:

SECTION 1. *Appointments.* (a) The functions of the President of the United States with respect to appointing certain members of the Board of Directors of the District of Columbia Redevelopment Land Agency (D.C. Code, sec. 5–703) are hereby transferred to the Commissioner of the District of Columbia.

(b) Nothing in this reorganization plan shall be deemed to terminate the tenure of any member of the Board of Directors of the District of Columbia Redevelopment Land Agency now in office.

SEC. 2. *Relationship of Board of Directors and Commissioner.* (a) There are transferred from the Board of Directors of the District of Columbia Redevelopment Land Agency to the Commissioner of the District of Columbia the functions of adopting, prescribing, amending and repealing bylaws, rules, and regulations for the exercise of the powers of the Board under D.C. Code, secs. 5–701 to 5–719 or governing the manner in which its business may be conducted (D.C. Code, sec. 5–703(b)).

(b) Any part of the functions transferred by this section may be delegated by the Commissioner to the Board.

The complete plan is set out in the appendix to title 1.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–704. Power to acquire and assemble real property.

* * * * *

(b) Condemnation proceedings for the acquisition of real property for said purposes shall be conducted in accordance with the procedural provisions of chapter 13 of title 16. The title to properties acquired under sections 5–701 to 5–719 shall be taken by and in the name of the Agency and proceedings for condemnation or other acquisition of property shall be brought by and in the name of the Agency. (Aug. 2, 1946, 60 Stat. 793, ch. 736, § 5; July 29, 1970, Pub. L. 91–358, § 166(b), title I, 84 Stat. 587).

AMENDMENT

1970—Section 166(b) of Act July 29, 1970, Public Law 91–358 amended subsection (b) by striking out "the Act entitled 'An Act to provide for the acquisition of land in the District of Columbia for the use of the United States', approved March 1, 1929 (45 Stat. 1415) or Acts which may amend or supplement said Act" and inserting in lieu thereof "chapter 13 of title 16 of the District of Columbia Code".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 5–705. General and project area redevelopment plans—Shaw Junior High School.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(122) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in relation to approving boundaries of project areas and redevelopment plans and modifications thereof, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5–717a, 5–719a.

§ 5–706. Transfer, lease, or sale of real property in project area for public and private uses.

(a) After any real property in the project area shall have been acquired by the Agency, the Agency shall have the power to transfer to and shall at a practicable time or times transfer by deeds to the United States or to the District of Columbia, or to the appropriate Federal or District public body, department, or agency, those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public uses (other than public housing) falling within the construction or administrative jurisdiction of Federal or District agencies, such as streets and other utilities and works, Federal and District public buildings, public recreational spaces, and schools. The Federal agencies and the public agencies of the District of Columbia are hereby empowered, respectively, to acquire real property from the Agency for the uses respectively specified in the project area plan and to pay for same out of their funds duly appropriated for such acquisition. Excepting for such property as may be transferred by dedication, gift, or exchange, the transferee agency shall pay to the Agency such sum as may be agreed upon or, in the absence of agreement, as may be fixed by the Chief Judge of the Superior Court of the District of Columbia.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 155(c)(19), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(19) of Act July 29, 1970, Public Law 91–358, amended subsec. (a) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS

Accessory uses

In a case where restrictions provided in an urban renewal plan on uses to which property involved might be put were specifically stated to be covenants running with land in favor of the owners of adjoining property, the owners of neighboring property with interest in proposing to lease space in buildings that they had erected and intended to erect for commercial purposes on neighboring land had standing to sue as to what "accessory uses" were permitted. *L'Enfant Plaza North, Inc.* v. *District of Columbia Redevelopment Land Agency, et al.* (1969, 300 F. Supp. 426).

All administrative remedies had been exhausted in a case where the chairman of redevelopment land agency stated in letter that board interpreted phrase "accessory uses" as permitting accessory uses other than the two named and where acting director of bureau of licenses and inspections stated that ordinarily if redevelopment land agency notified the bureau that proposed use conformed to urban renewal plan bureau would issue certificate of occupancy for use, and there existed an actual controversy for decision by the courts. *Id.*

An interpretation that phrase "accessory uses" permitted accessory uses other than those named in provision in urban renewal plan, allowing owner of land in question to erect building limited to offices and accessory uses such as employee restaurants and off-street parking necessary to serve primary uses, was not unreasonable or erroneous and would not be upset. *Id.*

§ 5–707. Housing for displaced families.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–711. Modification of redevelopment plans.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(122) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in relation to approving boundaries of project areas and redevelopment plans and modifications thereof, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 5–715. Appropriations authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–716. Acquisition under District of Columbia Alley Dwelling Act.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–717a. Acceptance of financial assistance authorized.

(a) As an alternative method of financing its authorized operations and functions under the provisions of sections 5–701 to 5–719 (in addition to that provided in section 5–715), the Agency is hereby authorized and empowered to accept financial assistance from the Secretary of Housing and Urban Development (hereinafter in this section referred to as the Secretary), in the form of advances of funds, loans, and capital grants pursuant to title I of the Housing Act of 1949, as amended, to assist the Agency in acquiring real property for redevelopment of project areas and carrying out any functions authorized under sections 5–701 to 5–719 for which advances of funds, loans, or capital grants may be made to a local public agency under title I of the Housing Act of 1949, as amended, and the Agency, subject to the approval of the District Commissioners and subject to such terms, covenants, and conditions as may be prescribed by the Secretary pursuant to title I of the Housing Act of 1949, as amended, may enter into such contracts and agreements as may be necessary, convenient, or desirable for such purposes.

(b) Subject to the approval of the District Commissioners, the Agency is authorized to accept from the Secretary advances of funds for surveys and plans in preparation of a project or projects authorized by sections 5–701 to 5–719 which may be assisted under title I of the Housing Act of 1949, as amended, and the Agency is authorized to transfer to the Planning Commission so much of the funds so advanced as the District Commissioners shall determine to be necessary for the Planning Commission to carry out its functions under sections 5–701 to 5–719 with respect to the project or projects to be assisted under title I of the Housing Act of 1949, as amended.

(c) The District Commissioners are authorized to include in their annual estimates of appropriations items for administrative expenses which, in addition to loan or other funds available therefor, are necessary for the Agency in carrying out its functions under this section.

(d) Notwithstanding the limitation contained in the last sentence of section 110(d) or in any other provision of title I of the Housing Act of 1949, as amended, the Secretary is authorized to allow and credit to the Agency such local grants-in-aid as are approvable pursuant to said section 110(d) with respect to any project or projects undertaken by the Agency under a contract or contracts entered into under this section and assisted under title I of the Housing Act of 1949, as amended. In the event such local grants-in-aid as are so allowed by the Secretary are not sufficient to meet the requirements for local grants-in-aid pursuant to title I of the Housing Act of 1949, as amended, the District Commissioners are hereby authorized to enter into agreements with the Agency, upon which agreements the Secretary may rely, to make cash payments of such deficiencies from funds of the District of Columbia. The District Commissioners shall include items for such cash payments in their annual estimates of appropriations, and there are hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, the amounts necessary to provide for such cash payments. Any amounts due the Secretary pursuant to any such agreements shall be paid promptly from funds appropriated for such purpose.

(e) All receipts of the Agency in connection with any project or projects financed in accordance with this section with assistance under title I of the Housing Act of 1949, as amended, whether in the

form of advances of funds, loans, or capital grants made by the Secretary to the Agency, or in the form of proceeds, rentals, or revenues derived by the Agency from any such project or projects, shall be deposited in the Treasury of the United States to the credit of a special fund or funds, and all moneys in such special fund or funds are hereby made available for carrying out the purposes of sections 5–701 to 5–719 with respect to such project or projects, including the payment of any advances of funds or loans, together with interest thereon, made by the Secretary or by private sources to the Agency. Expenditures from such fund shall be audited, disbursed, and accounted for as are other funds of the District of Columbia.

(f) With respect to any project or projects undertaken by the Agency which are financed in accordance with this section with assistance under title I of the Housing Act of 1949, as amended—

(1) sections 5–702(f), 5–702(k), and 5–706 (g), and the last sentence of section 5–705(b) (2) shall not be applicable to those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended;

(2) the site and use plan for the redevelopment of the area, included in the redevelopment plan of the project area pursuant to section 5–705(b) (2), shall include the approximate extent and location of any land within the area which is proposed to be used for public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended;

(3) notwithstanding any other provisions of sections 5–701 to 5–719 the Agency, pursuant to section 5–706(a), shall have power to transfer to and shall at a practicable time or times transfer by deeds to the National Capital Housing Authority those pieces of real property which, in accordance with the approved project area redevelopment plan, are to be devoted to public housing to be undertaken under Public Law 307, Seventy-third Congress, approved June 12, 1934, as amended, and, in accordance with the requirements of section 107 of the Housing Act of 1949, the National Capital Housing Authority shall pay for the same out of any of its funds available for such acquisition.

(g) It is the purpose and intent of this section to authorize the District Commissioners and the appropriate agencies operating within the District of Columbia to do any and all things necessary to secure financial aid under title I of the Housing Act of 1949, as amended. The District of Columbia Redevelopment Land Agency is hereby declared to be a local public agency for all of the purposes of title I of the Housing Act of 1949, as amended. As such a local public agency for all of the purposes of title I of the Housing Act of 1949, as amended, the Agency is also authorized to borrow money from the Secretary or from private sources as contemplated by title I of the Housing Act of 1949, as amended, to issue its obligations evidencing such loans, and to pledge as security for the payment of such loans and the interest thereon, the property, income, revenues, and other assets acquired in connection with the project or projects financed in accordance with this section with assistance under title I of the Housing Act of 1949, as amended, but such obligations or such pledge shall not constitute a debt or obligation of either the United States or of the District of Columbia.

(h) Nothing contained in this section or in sections 5–701 to 5–719 shall relieve the Secretary of his responsibilities and duties under section 105 (c) or any other section of the Housing Act of 1949, as amended. The Secretary shall not enter into any contract of financial assistance under title I of this Act with respect to any project of the District of Columbia Redevelopment Land Agency for which a budget estimate of appropriation was transmitted pursuant to law and for which no appropriation was made by the Congress.

(i) In addition to its authority under any other provision of sections 5–701 to 5–719, the Agency is hereby authorized to plan and undertake urban renewal projects (as such projects are now or may hereafter be defined in title I of the Housing Act of 1949, including but not limited to projects authorized without regard to the residential or nonresidential character or reuse of the urban renewal area), and in connection therewith the Agency, the District Commissioners, the National Capital Planning Commission, and the other appropriate agencies operating within the District of Columbia shall have all of the rights and powers which they have with respect to a project or projects financed in accordance with the preceding subsections of this section: *Provided,* That for the purpose of this subsection the word "redevelopment" wherever found in sections 5–701 to 5–719 (except in section 5–702 (n)) shall mean "urban renewal", and the references in section 5–705 to the acquisition, disposition, or assembly of real property for a project shall mean the undertaking of an urban renewal project.

(j) The District Commissioners are hereby authorized to prepare a workable program as prescribed by section 101(c) of the Housing Act of 1949, as amended, and are also authorized to request the necessary funds for the preparation of said workable program. The Commissioners may request the participation of the Agency in the preparation of said workable program and may include in their annual estimates of appropriations such funds as may be required by the Commissioners or the Agency, or both, for this purpose. The District Commissioners are hereby authorized, with or without reimbursement, to cooperate with the Agency in carrying out urban renewal projects and to utilize for that purpose the facilities and personnel of the District of Columbia under agreement with the Agency. (Aug. 2, 1946, ch. 736, § 20 as added July 15, 1949, 63 Stat. 441, ch. 338, title VI, § 609, and amended Aug. 2, 1954, 68 Stat. 630, ch. 649, title III, § 316; Aug. 10, 1965, Pub. L. 89–117, title III, § 317, 79 Stat. 484; May 25, 1967, Pub. L. 90–19, § 3, 81 Stat. 20.)

REFERENCES IN TEXT

Title I of the Housing Act of 1949, referred to in the text, is classified to 42 U.S.C. §§ 1450 to 1469c.

Sections 101(c), 105(c), 107, and 110(d), of the Housing Act of 1949, referred to in the text, are classified respectively to 42 U.S.C. §§ 1451(c), 1455(c), 1457, and 1460(d).

AMENDMENTS

1967—Sec. 3, of act May 25, 1967, amended section by striking out "Housing and Home Finance Administrator (hereafter in this section referred to as the Administrator)" in subsection (a) and inserting in lieu "Secretary of Housing and Urban Development (hereinafter in this section referred to as the Secretary)" and by striking out "Administrator" each place it appears and inserting in lieu "Secretary".

1965—Section 317, Pub. L. 89–117, amended the first full paragraph (subsection i) of section 316(2) of the Act of Aug. 2, 1954, 68 Stat. 630, ch. 649 (which added subsections (i) and (j)), by striking out the first parenthetical clause and inserting in lieu thereof a new parenthetical clause to read as above set out in subsection (i). The clause that was stricken read as follows: (as such projects are defined in title I of the Housing Act of 1949, as amended,).

1954—Act Aug. 2, 1954, added "as amended" after "1949" wherever appearing, and added subsecs. (i) and (j).

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402 (123, 124 and 125) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (a), (b) and (d) in the particulars specified in pars. 123, 124 and 125, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5–717a, 5–719a.

§ 5–718. Effect upon existing statutes.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(126) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) in relation to approving releases, modifications, and departures from features and details of approved redevelopment plans, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 5–719a. Neighborhood development programs.

Notwithstanding any requirement or condition to the contrary in section 5–705 or 5–717a(i), or in any other provision of law, the District of Columbia Redevelopment Land Agency may plan and undertake neighborhood development programs under part B of title I of the Housing Act of 1949 (as added by this section), subject to all of the provisions of sections 5–701 to 5–719 to the extent not inconsistent with such part B, and any such program shall be regarded as complying with the requirements of such sections 5–705 and 5–717a(i) and of such other provision of law if it meets the applicable requirements established under such part B. (Aug. 1, 1968, Pub. L. 90–448, § 501(c), title V, 82 Stat. 520.)

REFERENCE IN TEXT

Part B of title I of the Housing Act of 1949 are sections 131 to 134, added by section 501(b) of title V, Act of Aug. 1, 1968, Pub. L. 90–448, and is classified to 42 U.S.C. 1469–1469c. The parenthetical phrase "as added by this section" has reference to section 501(b) of the aforementioned act.

§ 5–720. Commissioners authorized to transfer to District of Columbia Redevelopment Land Agency certain property located in Maine Avenue area.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(127) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5–723, 5–724.

§ 5–721. Same; determination of necessity.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(128) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in appendix to title 1.

§ 5–722. Same; transfer of jurisdiction to Agency.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(129) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in appendix to title 1.

§ 5–723. Same; Agency authorized to lease property—Limitations on other transfers—No transfer of funds required if property is acquired by District or Agency of United States—Owners of displaced business concerns to have priority in leasing privileges — Notification — Rent formula — Residual value of land.

* * * * *

(b) In connection with the leasing of the real property transferred to the Agency under the authority of sections 5–720 to 5–727, together with the leasing of any real property lying between such real property so transferred and the southerly or westerly line of Maine Avenue as the same may be relocated in connection with carrying out an urban renewal plan, the Agency is authorized and directed to provide to the owner or owners of any business concern displaced from the area described in section 5–720, a priority of opportunity to lease, either individually or as a redevelopment company solely owned by the owner or owners of one or more such business concerns, so much of such real property lying channelward of the southerly or westerly line of Maine Avenue as so relocated, at a rental based on the use-value of the real property so leased determined in accordance with the provisions of section 5–709, and section 1460(c)(4) of title 42, U.S. Code,

as may be required for the construction of commercial facilities at least substantially equal to the facilities from which such business concern was so displaced. The priority of opportunity created by this section is a personal right of the owners of businesses displaced. In the event of the death of any such owner of any such displaced business, the spouse of such owner, or, if there is no spouse, the children of such owner shall be entitled to exercise the priority of such owner in accordance with the provisions of this section, but in no event shall any such priority be otherwise transferable: *Provided, however,* That the spouse or the children, as the case may be, shall have no greater priority than the priority holder would have had if living. For the purposes of exercising such priority, the spouse or children, as the case may be, shall be deemed to be owner of such business concern so displaced. When the real property affected by the provisions of ths subsection becomes available for leasing by the Agency, the Agency shall notify, in writing, the owners of the business concerns displaced, as to the availability of such real property for leasing to such owners in accordance with the provisions of this subsection. The Agency shall give such owners so notified a period of one hundred and eighty days to notify the Agency, in writing, of their intention to proceed in accordance with the general development plan of the Agency for the area lying channelward of Maine Avenue, as so relocated, and to demonstrate to the Agency their ability to carry out so much of such plan as may be embraced within the area which they desire to lease. If at the end of such period of one hundred and eighty days, such owners have failed to make a demonstration to that effect which is satisfactory to the Agency, the priority of opportunity provided by this subsection shall no longer continue to be available to such owners, except that if after the end of such one-hundred-and-eighty-day period the Agency shall change the terms under which real property is to be leased, or the redevelopment plan for the area described in section 5–720 is changed so as to affect the economic value of the leasehold, the Agency shall in writing notify each such owner of the change or changes so made and give to such owner so notified a period of sixty days within which to advise the Agency in writing of his intention and to demonstrate his ability to proceed as aforesaid.

(c)(1) Notwithstanding any other provision of law, whenever, pursuant to subsection (b), the Agency offers leaseholds to persons entitled to a priority of opportunity to lease under the provisions of this section, the annual rent prescribed in such lease shall not exceed an amount which is the greater of—

(A) an amount equal to 6 per centum of the residual value of the land for the prescribed use to which any owner of a displaced business concern shall put such land under such lease;

(B) the annual amount which the Agency shall be required to pay in principal and interest on a forty-year loan of an amount equal to the residual value of the land under such lease which value is the residual value of the land which was determined by the Agency, in accordance with this subsection, and on the basis of which such land was initially leased under this section; or

(C) the sum of (i) the amount determined under subparagraph (A) or (B) of this paragraph, whichever is greater, and (ii) 50 per centum of the product of the occupancy cost factor for the class and character of the business of such lessee times the amount by which the lessee's actual annual gross sales income exceeds the estimated gross sales income (for the class and character of the displaced business) used by the Agency in determining the residual value of the land leased to such lessee.

In the case of any land which the Agency leases under this section, the annual rent prescribed by the Agency in the lease of such land shall not, during the forty-three-year period beginning on the date such land was first leased by the Agency under this section, be less than the amount determined under subparagraph (B) of this paragraph. In the case of any land which the Agency leases under this section to a displaced business, the residual value of such land—

(I) may be redetermined by the Agency after the expiration of twenty-five years from the date such land was first leased by the agency and at the end of each ten-year period thereafter, or

(II) shall be redetermined by the Agency if at the end of the twenty-five-year period from the date such land was first leased by the Agency or at the end of each ten-year period thereafter, the lessee requests the Agency to redetermine such residual value.

The residual value of such land shall make due allowance for the cost to the owner of the displaced business of all improvements and public charges on such land, and shall not exceed the maximum fair use value economically feasible to permit the reestablishment of a business of the class and character of such displaced business.

(2) Each business holding a lease under this Act shall furnish annually to the Agency (on such date as the Agency may by regulation prescribe) a copy of the sales tax return filed by such business under the District of Columbia Sales Tax Act, which copy was furnished to the business under section 47–2615(a). (As amended Dec. 6, 1967, Pub. L. 90–176, § 1, 81 Stat. 542.)

REFERENCES IN TEXT

This "Act" referred to in subsection (c) is the Act of Sept. 8, 1960, as amended by the Act of Dec. 6, 1967, Pub. L. 90–176 and set out as §§ 5–720 to 5–727. District of Columbia Sales Tax Act referred to in subsection (c) is the Act set out as title 47, ch. 26 of the D.C. Code.

AMENDMENTS

1967—Section 1, Act Dec. 6, 1967, Pub. L. 90–176, made the following amendments to the section:

(1) Struck out of the first sentence of subsection (b) "by reason of the enactment of Section 7–134,";

(2) Struck out of the former second sentence [now third sentence] of subsection (b) "by reason of the operation of section 7–134,";

(3) Inserted after the first sentence a new second sentence beginning with the word "The priority" and ending with "so displaced";

(4) Struck out the period at the end of the last sentence of subsection (b), inserted a comma and the matter beginning with the words "except that" and ending with "aforesaid";

(5) Added subsection (c).

§ 5–724. Same; reversion provisions.

Notwithstanding sections 5–720 to 5–723, if any of the real property transferred to the Agency under the authority of sections 5–720 to 5–727 is not leased by the Agency in accordance with an urban renewal plan approved by the Commissioners, or otherwise disposed of, on or before the date the Secretary of Housing and Urban Development makes the final Federal capital grant payment to the Agency for the project pursuant to title I of the Housing Act of 1949, as amended, then the right, title, and interest in and to so much of the said real property as is not so leased or otherwise disposed of by such date shall revert to the United States, subject to the exclusive control and jurisdiction of the Commissioners of the District of Columbia, and subject to the provisions of sections 8–115 and 8–116. (Sept. 8, 1960, 74 Stat. 872, Pub. L. 86–736, § 5; May 25, 1967, Pub. L. 90–19, § 17, 81 Stat. 25.)

REFERENCES IN TEXT

Title I of the Housing Act of 1949, as amended, referred to in the text, is classified to 42 U.S.C. § 1450 et seq.

AMENDMENT

1967—Sec. 17 of act May 25, 1967, amended section by striking out "Housing and Home Finance Administrator" and inserting in lieu thereof "Secretary of Housing and Urban Development".

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–725. Same; Commissioners may not be required to transfer property needed for municipal purposes.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–728. Commissioners of the District of Columbia authorized to provide relocation services to displaced persons and concerns as a result of actions by the United States or District Governments—Displaced persons to be given preference in vacancies occurring in Government houses within the District—Housing surveys authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–729. Repealed. Jan. 2, 1971, Pub. L. 91–646, title II, § 220(a)(7), 84 Stat. 1903.

Section, act Oct. 6, 1964, Pub. L. 88–629, § 2, 78 Stat. 1004, related payments to persons displaced as a result of displacement from property acquired for public works projects. See § 5–732a.

EFFECTIVE DATE OF REPEAL

Section 221(a) of Act Jan. 2, 1971, Pub. L. 91–646, provided: "Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act [section 220(a)(7) repealed § 5–729] shall take effect on the date of its enactment."

SAVINGS CLAUSE

Section 220(b) of Act Jan. 2, 1971, Pub. L. 91–646, provided: "Any rights or liabilities now existing under prior Acts or portions thereof shall not be affected by the repeal of such prior Acts or portions thereof under subsection (a) of this section."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(130) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to regulations for making relocation payments as specified in par. 130, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 5–730. Determination of available housing, for displaced persons, to be made prior to acquisition of real property for public works.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–732. Commissioners authorized to make regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(131) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 5–732a. Relocation payments and assistance—Persons displaced by public works programs and projects of District Government and of Washington Metropolitan Area Transit Authority.

Whenever real property is acquired by the government of the District of Columbia or the Washington Metropolitan Area Transit Authority for a program or project which is not subject to sections 210 and 211 of this title, and such acquisition will result in the displacement of any person on or after the effective date of this Act, the Commissioner of the District of Columbia or the Washington Metropolitan Area Transit Authority, as the case may be, shall make all relocation payments and provide all assistance required of a Federal agency by this Act. Whenever real property is acquired for such a program or project on or after effective date, such Commissioner or Authority, as the case may be, shall make all payments and meet all requirements prescribed for a Federal agency by title III of this Act. (Jan. 2, 1971, Pub. L. 91–646, title II, § 209, 84 Stat. 1899.)

REFERENCES IN TEXT

The words "sections 210 and 211 of this title" and "title III of this Act", referred to in text, refer to sections 210 and 211 of title II, and title III, respectively, of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, Pub. L. 91–646. Sections 210 and 211 are classified to 42 U.S.C. 4630 and 4631, and title III is classified to 42 U.S.C. 4651 et seq.

For definitions applicable to terms referred to in text, see 42 U.S.C. 4601.

CODIFICATION

Section is also classified to 42 U.S.C. 4629.

EFFECTIVE DATE

Section 221(a) of Act Jan. 2, 1971, Pub. L. 91–646, provided: "Except as provided in subsections (b) and (c) of this section, this Act and the amendments made by this Act [section 209 enacted § 5–732a] shall take effect on the date of its enactment."

§ 5–733. Commissioners authorized and directed on behalf of the United States to transfer to District of Columbia Redevelopment Land Agency all right, title and interest of the United States to certain real property consisting of a part of Maryland Avenue and other streets in the southwest area.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–735. Same; Agency authorized to transfer to District of Columbia its interest in certain rights of way located on parts of Thirteen-and-a-Half Street, E Street and Thirteenth Street Southwest, for a consideration of $82,896.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 8.—PRESERVATION OF HISTORIC PLACES AND AREAS IN THE GEORGETOWN AREA

§ 5–801. Old Georgetown district created and defined.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7–944 and 7–951.

§ 5–802. Restrictions imposed on alteration of buildings.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7–944 and 7–951.

§ 5–803. Review board established.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7–944 and 7–951.

§ 5–804. Survey of district authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7–944 and 7–951.

§ 5–805. Construction with other laws.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7–944 and 7–951.

§ 5–806. Old Georgetown Market as historic landmark—Use as public market.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–807. Appropriations to carry out section 5–806.

For the purpose of carrying out the provisions of section 5–806, there are authorized to be appropriated to the District of Columbia such sums as may be necessary. (Sept. 21, 1966, 80 Stat. 830, Pub. L. 89–600, § 2; Jan. 5, 1971, Pub. L. 91–650, title VII, § 701, 84 Stat. 1938.)

AMENDMENT

1971—Section 701 of Act Jan. 5, 1971, Pub. L. 91–650, struck out ", but not to exceed in the aggregate $150,000".

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of Act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

Chapter 9.—HORIZONTAL PROPERTY REGIMES

§ 5–910. Reference to plat.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–911. Termination and waiver of regime.

AMENDMENT

1970—Section 155(c)(20) of Act July 29, 1970, Public Law 91–358, amended the third proviso in subsec. (a) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 5–928. Regulations of the Board of Commissioners and the zoning commission.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(132) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 5–930. Supplemental provisions relating to sewer and water services.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 5–931. Authority of Board of Commissioners Under Reorganization Plan Numbered 5 of 1952.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TITLE 6.—HEALTH AND SAFETY

Chap. Sec.
8. Air Pollution Control 6–811
14. Register of Blind Persons 6–1401

Chapter 1.—HEALTH DEPARTMENT—ORGANIZATION

§ 6–101. Director of public health—Appointment and duties.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–104. Sanitary inspectors, appointment, qualifications—Removal of subordinates.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–106. Report by director of public health.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–107. Clerks to director of public health—Appointment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–111. Certain ordinances of Board of Health legalized.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6–113.

§ 6–112. Certain ordinances, rules, and regulations of Board of Health legalized and made valid.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6–113.

§ 6–113. Certain health ordinances to have force and effect of Acts of Congress—Exception—Industries established August 7, 1894.

Except as provided in section 6–112, the ordinances of the late Board of Health of the District of Columbia, as legalized by sections 6–111, 6–112, are hereby declared to have the same force and effect within the District of Columbia as if enacted by Congress in the first instance, and the powers and duties imposed upon the late Board of Health, in and by the said ordinances, are hereby conferred upon the director of public health of said District, and all prosecutions for violations of said ordinances and regulations shall be in the Superior Court of the District of Columbia in the name of the said District: *Provided*, That said regulations shall not be enforced against industries established on Aug. 7, 1894, which are not a nuisance in fact. (Aug. 7, 1894, 28 Stat. 257, ch. 232; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; Aug. 1, 1950, 64 Stat. 393, ch. 513; § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 6–114. Commissioners authorized to make health regulations and alter, amend, or repeal certain legalized ordinances.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(133) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 6–117. Tuberculosis Sanatoria under direction of Health Department.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Governmental function

In the case, the court held that the District of Columbia in expending public moneys for public purpose in connection with treatment of patient for tuberculosis was asserting public right in attempting to recover that amount, though suit was based on contract to pay for the services. *L. E. Weiss* v. *District of Columbia* (D.C. App. 1970, 263 A. 2d 638).

Statute of Limitations

The statute of limitations does not apply to suit brought by District of Columbia to recover moneys expended on treating patient for tuberculosis though suit was based on contract to pay for those services. *L. E. Weiss* v. *District of Columbia* (D.C. App. 1970, 263 A. 2d 638).

§ 6–118. Commissioners to promulgate regulations to prevent spread of diseases.

The Commissioners of the District of Columbia are hereby authorize and empowered to promulgate and enforce all such reasonable rules and regulations as they may deem necessary to prevent and control the spread of communicable and preventable diseases in the District of Columbia, including the authority and power to provide for the isolation, quarantine, and restriction of the movements of persons affected by or believed, upon probable cause, to be affected by communicable disease and of persons who are or are believed, upon probable cause, to be carriers of communicable disease. (Aug. 11, 1939, 53 Stat. 1408, ch. 691, § 1; Aug. 8, 1946, 60 Stat. 919, ch. 871, § 1.)

CODIFICATION

This section is set out in this supplement to correct a typographical error of omission by inserting the words

"and preventable" between the words "communicable" and "diseases" in the fifth line, so as to conform to the Statutes at Large.

AMENDMENT

1946—Act Aug. 8, 1946, authorized the Commissioners to provide for isolation, quarantine, and restriction of persons affected by, or who are carriers of, communicable disease.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(134) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in relation to promulgating rules and regulations to prevent and control the spread of communicable diseases, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 6–119. "Communicable disease" defined.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(135) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 6–119b. Authority for detention—Expiration of order—Hearing—Minors.

A copy of the order provided for in section 6–119a hereof shall be delivered to the person in charge of such place or institution to which the person taken into custody may be removed and shall constitute the authority for the detention of such person in such place or institution until such order expires or until such person is discharged in the manner set forth in this section or section 6–119c. Such order shall expire forty-eight hours (exclusive of Sundays and holidays) after such officer, employee, or member shall take into his custody such person as provided in section 6–119a, unless it shall be continued in force and effect by a judge of the Superior Court of the District of Columbia, or unless such detained person shall stipulate in writing that the order be continued in force and effect. Such order shall be continued in force and effect if it shall appear to said judge by affidavit that the probable cause, required by section 6–119a, exists. If the judge continue [1] in force and effect the order of the director of public health, the judge at that time shall set a date for a hearing upon the question of whether the person detained is at the time of such hearing affected with any communicable disease or is a carrier of communicable disease and, if so affected, upon the further question whether his release would be likely to endanger the lives or health of any other person. If such person be not sooner discharged such hearing shall be had within ten days of the date of the order of the court continuing in force and effect the order of the director of public health unless such hearing be continued by the court, or unless the detained person shall, in writing, waive such hearing, which waiver shall be filed with the court. Such hearing shall be in or out of the presence of the detained person, in the discretion of the court. If, after such hearing, the court shall find that the detained person is not affected with any communicable disease and is not a carrier of communicable disease, or that the discharge of such person, even though affected with, or a carrier of, a communicable disease is not likely to endanger the lives or health of any other person the court shall order such detained person to be discharged, otherwise the court shall continue in force and effect the order of the director of public health until such person be discharged in the manner set forth in section 6–119c. If a minor is detained pursuant to this section or section 6–119e hereof, or is found guilty and sentence is suspended as provided in section 6–119g hereof, and such minor is in need of treatment for the communicable disease with which he is affected or of which he is a carrier, the court is empowered to authorize the director of public health to administer such treatment or cause the same to be administered. No person under eighteen years of age detained under sections 6–119a, 6–119b, 6–119c, or 6–119e, shall be detained in a room in which a person over that age is so detained. (Aug. 11, 1939, ch. 691, §4, as added Aug. 8, 1946, 60 Stat. 919, ch. 871, § 2, and amended Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6–119c to 6–119g and 6–1191 to 6–119k.

§ 6–119c. Examination and diagnosis—Discharge or detention for quarantine—Application for discharge—Hearing.

It shall be the duty of the director of public health to make or cause to be made by a physician such examination or examinations of such person as may be necessary to determine the existence or nonexistence of such communicable disease in such person or whether such person is a carrier of communicable disease. The diagnosis resulting from such examination or examinations shall be reduced to writing and signed by such examining physician within ten days after the removal of such person to such place or institution and a copy thereof shall be filed in the office of the person in charge of such place or institution and a copy in the office of the director of public health. If such diagnosis does not disclose that such person is affected with such communicable disease or that such person is a carrier of communicable disease, such person shall be discharged from such place or institution forth-

[1] So in original. Probably should be "shall continue".

with. If the diagnosis does disclose that such person is affected with such communicable disease or that such person is a carrier of communicable disease, the person in charge of the place or institution to which the infected person has been removed shall, subject to the provisions of section 6–119b, detain such person for such reasonable time as may be fixed by regulation under the authority of sections 6–118 to 6–119k as is deemed necessary in the interest of public health and safety for the isolation, quarantine, and restriction of movement of persons affected by the particular communicable disease or of persons found to be carriers of the particular communicable disease, unless sooner discharged by the director of public health or the Superior Court of the District of Columbia. A person so detained, however, may apply at any time to the person in charge of such place or institution for his discharge, and the person in charge of such place or institution shall deliver the application for discharge to the director of public health, who shall give to such person an opportunity to be heard before the director of public health. If after hearing held by the director of public health, the director of public health be of the opinion that such person is not affected with such communicable disease and that such person is not a carrier of communicable disease, then such person shall be discharged. If denied his discharge such detained person may apply to the Superior Court of the District of Columbia for such discharge and the hearing on such application shall be in or out of the presence of the detained person, in the discretion of the court. Only such persons as have a direct interest in the case and their representatives shall be admitted to any hearing held pursuant to this section or section 6–119b: *Provided,* That if the detained person shall request a public hearing then the general public shall be admitted thereto. (Aug. 11, 1939, ch. 691, § 5, as added Aug. 8, 1946, 60 Stat. 920, ch. 871, § 2, and amended Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6–119b, 6–119d to 6–119g, 6–119i to 6–119k.

§ 6–119e. Warrant for arrest—Affidavit—Service and execution of warrant—Records.

(a) In aid of the powers vested in the director of public health to cause the removal to and detention in a place or institution of a person who is affected or is believed, upon probable cause, to be affected with any communicable disease or is or is believed, upon probably cause, to be a carrier of communicable disease as provided in sections 6–118 to 6–119k, the Superior Court of the District of Columbia, or any judge thereof, is authorized to issue a warrant for the arrest of such person and his removal to a place or institution as defined in section 6–119a, which warrant shall be directed to the Major and Superintendent of Police. When such person has been removed to such place or institution under authority of a warrant issued pursuant to this section, such person shall not be discharged from such place or institution except in the manner provided in section 6–119c.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (a) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6–119b, 6–119c, 6–119f, 6–119g, 6–119i to 6–119k.

§ 6–119h. Penalties—Prosecutions—Imposition of conditions by court.

Any person who violates any of the provisions of section 6–119d, 6–119f or 6–119g shall be punished by a fine of not more than $300 or by imprisonment for not longer than ninety days, or both such fine and imprisonment, in the discretion of the court. The Commissioners of the District of Columbia shall have power to prescribe penalties of fine not to exceed $300 or imprisonment not to exceed ninety days, or both, in the discretion of the court for the violation of any regulation promulgated under section 6–119d, 6–119f or 6–119g. All prosecutions for violations of section 6–119d, 6–119f or 6–119g or the regulations promulgated thereunder shall be in the Criminal Division of the Superior Court of the District of Columbia, in the name of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants. The court may impose conditions upon any person found guilty under the aforesaid provisions and so long as such person shall comply therewith to the satisfaction of the court the imposition or execution of sentence may be suspended for such period as the court may direct; and the court may at or before the expiration of such period vacate such sentence or cause it to be executed. Conditions thus imposed by the court may include submission to medical and mental examination, diagnosis, and treatment by proper public health and welfare authorities or by any licensed physician approved by the court, and such other terms and conditions as the court may deem best for the protection of the community and the punishment, control, and rehabilitation of the defendant. The director of public health of the District of Columbia, the Metropolitan Police force, and employees of the Board of Public Welfare are authorized and directed to perform such duties as

may be directed by the court in effectuating compliance with the conditions so imposed upon any defendant. (Aug. 11, 1939, ch. 691, § 10, as added Aug. 8, 1946, 60 Stat. 922, ch. 871, § 2, and amended Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Public L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CHANGE OF NAME

"Director of public health" substituted for "health officer" to conform to act Aug. 1, 1950. See note set out under section 6–101.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "Municipal Court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

TRANSFER OF FUNCTIONS

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(136) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section insofar as they relate to prescribing penalties for violation of regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 6–119c, 6–119e to 6–119g, 6–119i to 6–119k.

Chapter 3.—VITAL STATISTICS

§ 6–301. Births to be reported—Details of report—Certain stillbirths not to be reported—Receipt of report to be acknowledged to parent—Name of child—Delayed registrations—Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(137 and 138) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) and (b) in the particulars described in pars. 137 and 138, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6–304.

§ 6–302. False reports of births prohibited—Certificates not to be altered—False or fictitious transcript of record of birth or marriage prohibited.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6–304.

§ 6–303. Reports to be part of records—Records open to persons interested—Custodian of reports—Abstracts and analysis of data to be published annually.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6–304.

§ 6–304. Penalties—Prosecutions—Evidence.

Any person violating any of the provisions of sections 6–301 to 6–303 or aiding or abetting in any violation thereof shall be punished by a fine not exceeding two hundred dollars or by imprisonment for a period not exceeding ninety days, or by both such fine and imprisonment, in the discretion of the court. And if any report required by sections 6–301, 6–302 to be made within a specified time be not made within the time so specified each week or part of a week thereafter during which such report has not been made shall constitute a separate and distinct offense: *Provided, however,* That no report aforesaid nor any information which has been obtained by the prosecuting officer on the basis of such report shall be receivable in evidence against the person filing the same in any prosecution of such person for failure to file such report within the time allowed by law. Prosecutions under sections 6–301 to 6–303 shall be in the Superior Court of the District of Columbia on informations signed by the corporation counsel of said District or by one of his assistants. (Mar. 1, 1907, 34 Stat. 1011, ch. 2280, § 4, Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 4.—DRAINAGE OF LOTS

§ 6–401. Buildings to be connected with water-mains and lots drained into public sewers.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6–403.

§ 6–402. Notice to connect with water-mains and sewers to be given by Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–403. Penalty for failure to connect watermain and sewer.

If the owner or owners of any such lot neglect or refuse to make such connections as are required by section 6–401 within thirty days after the receipt of such notice, such owner or owners shall be deemed guilty of a misdemeanor, and shall, on conviction in the Superior Court of the District of Columbia, be punished by a fine of not less than one dollar nor more than five dollars for each day he, she, or they fail or neglect to make such connections. (May 19, 1896, 29 Stat. 126, ch. 206, § 3; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 6–404. Notice to nonresident—How given—Upon failure of owner, Commissioners to make such connections—Cost of connections by Commissioners' lien on property.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 5.—GARBAGE

§ 6–501. Regulations for the collection and disposal of garbage to be made by Commissioners—Penalties.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(139) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 6–502. Commissioners may contract for collection and disposal of garbage and refuse.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–503. Disposition by feeding to live stock.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–504. Collection and disposal of refuse a municipal function—Facilities to be purchased or leased—Sale of products—Employees to accept no gratuities—Penalty.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–505. Incinerators for combustible refuse—Condemnation of site authorized—Alleys, highways.

The Commissioners of the District of Columbia are authorized to acquire, by purchase at such price or prices as, in their judgment, they may deem reasonable and fair, or in the discretion of the commissioners, by condemnation, in accordance with the provisions of chapter 13 of title 16, under a proceeding or proceedings in rem instituted in the Superior Court of the District of Columbia, two suitable and properly located sites in the District of Columbia, one in the southeastern section not exceeding one hundred thousand square feet in area, and one in Georgetown, not exceeding forty-nine thousand square feet in area: *Provided,* That the location of said sites shall be approved by the National Capital Planning Commission before purchase or the institution of proceedings for condemnation thereof: *Provided,* That if the said sites or any part thereof be condemned the said commissioners shall be entitled to enter immediately into possession of any property for which an award shall have been made by paying the amount of such award into the registry of the Superior Court of the District of Columbia: *Provided further,* That authority is hereby granted to occupy in addition to the site to be acquired in the southeastern section, such public highways and alleys or parts of public highways and alleys as abut or fall within said site, but the owners of abutting property shall not be denied the use of such highways or parts of highways for ingress and egress. (Mar. 4, 1929, 45 Stat. 1549, ch. 688, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, §§ 155(c)(21), 166(c), title I, 84 Stat. 571, 587.)

AMENDMENTS

1970—Section 155(c)(21) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

Section 166(c) of Act July 29, 1970, Public Law 91–358 amended section by striking out "Chapter XV of the Code of Law for the District of Columbia" and inserting in lieu thereof "chapter 13 of title 16 of the District of Columbia Code".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–506. Construction of incinerator authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–507. Commissioners to fix time when plant shall begin to function—Other methods of disposal prohibited—Sale of salvageable material—Rules and regulations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(140) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section insofar as they relate to the making of regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 6–509. Machinery and personnel authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–510. Appropriation authorized—Abandonment of leased plant.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–511. Use of incinerator by certain Maryland and Virginia municipalities authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(141) of Reorg. Plan. No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the extent specified in par. 141, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 6.—MANUFACTURE, RENOVATION, AND SALE OF MATTRESSES

§ 6–602. Sale without label—False label—Use of materials from mattress used in hospital, sanitarium or by person with contagious disease forbidden—Offering renovated mattress for sale as new—Removing, defacing, or concealing label.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6–605.

§ 6–603. Tag requirements.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(142) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 6–604. Guaranty from manufacturer to protect dealer—Prosecution of manufacturer outside the District of Columbia.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6–605.

§ 6–605. Penalties, prosecutions.

Any person violating any provision of section 6–602 or section 6–607 shall, upon conviction thereof, be punished by a fine or not more than $500, or by imprisonment for not more than six months, or both. All prosecutions under this chapter, except as provided in section 6–604, shall be in the Superior Court of the District of Columbia upon information by the corporation counsel or one of his assistants. (July 3, 1926, 44 Stat. 839, ch. 768, § 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155 (a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 6–606. Administration by director of public health—Commissioners to make regulations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–607. Investigation of supposed violations—Authority to enter buildings—Evidence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6–605.

Chapter 7.—PRIVIES

§ 6–703. Regulation of construction and maintenance.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(143) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 8.—AIR POLLUTION CONTROL

Sec.
6–801 to 804. Repealed.
6–811. Declaration of purpose.
6–812. Emission and air quality standards established by the District of Columbia Council.
6–813. Air pollution control program for the District of Columbia.

§§ 6–801 to 6–804. Repealed. July 30, 1968, Pub. L. 90–440, § 6, 82 Stat. 460.

Sections 1 to 4 of act Aug. 15, 1935, 49 Stat. 654, chapter 549, dealt with smoke prevention, regulations for enforcement and penalties. The subject matter is now covered by sections 6–811 to 6–813.

EFFECTIVE DATE OF REPEAL

Section 6 of act July 30, 1968, Pub. L. 90–440, provided: "Effective on the one hundred and eightieth day following the date of enactment of this Act [July 30, 1968] (enacting sections 6–811 to 6–813, amending section 11–742(a) and repealing sections 6–801 to 6–804); the Act approved August 15, 1935 (D.C. Code, secs. 6–801—6–804), is repealed."

§ 6–811. Declaration of purpose.

It is the purpose of this chapter to enable the District of Columbia Council and the Commissioner of the District of Columbia to take such action (including the adoption of air pollution control regulations of the type proposed in the model air pollution control ordinance adopted by the Metropolitan Washington Council of Governments) as may be necessary to protect and enhance the quality of the District of Columbia's air resources so as to promote the public health and welfare and the productive capacity of its population; to foster their comfort and convenience; and to increase the enjoyment of all of the attractions of the Nation's Capital. (July 30, 1968, Pub. L. 90–440, § 2, 82 Stat. 458.)

SHORT TITLE

Section 1 of act July 30, 1968, Pub. L. 90–440, provided: This Act (enacting sections 6–811 to 6–813, amending section 11–742(a), by adding clause (11) thereto and repealing sections 6–801 to 6–804) may be cited as the "District of Columbia Air Pollution Control Act".

§ 6–812. Emission and air quality standards established by the District of Columbia Council.

(a)(1) The District of Columbia Council (hereafter referred to in this chapter as the "Council") shall prescribe (A) within six months after July 30, 1968 regulations to control emissions in the District of Columbia of substances into the atmosphere, and (B) such other regulations to protect and improve

air quality in the District of Columbia as it determines are necessary to carry out the purposes of this chapter.

(2) In carrying out clause (A) of paragraph (1) of this subsection, the Council shall prescribe regulations for the control of the following air pollution problems in the District of Columbia:

(A) combustion of fuels at stationary sources,

(B) solid waste disposal and salvage operations,

(C) visible emissions,

(D) process emissions, and

(E) emissions from motor vehicles (including diesel driven vehicles).

The provisions of such regulations shall be at least as stringent as the provisions of the recommendations made by the Secretary of Health, Education, and Welfare for the control of such problems and contained in his recommendations for abatement of air pollution in the National Capital metropolitan area presented in January 1968 to the interstate air pollution abatement conference called under section 105(d)(1)(C) of the Clean Air Act (42 U.S.C. 1857d).

(3) The Council may review and make such revisions of regulations prescribed under this chapter as it determines are necessary to carry out the purposes of this chapter, except that any regulation prescribed under clause (A) of paragraph (1) of subsection (a) shall be so reviewed at least once every two years.

(4) The regulations prescribed by the Council under this chapter shall apply to any building, installation, or other property, which is located in the District of Columbia and which is under the jurisdiction of any department, agency, or instrumentality of the United States Government, only to the extent provided in Executive Order 11282 of May 26, 1966, any other Executive order of the President, and any Federal regulations, issued to carry out section 111 of the Clean Air Act (42 U.S.C. 1857f).

(5) The Council may impose in any regulation prescribed under this chapter a fine (not to exceed $300) or imprisonment (not to exceed ninety days), or both, for a violation of such regulation; and may provide that if such violation is a continuing one, each day of such violation shall constitute a separate offense.

(b) In the formulation of any regulations under this chapter, the Council shall afford interested persons an opportunity to participate in the formulation of such regulations through submission of written data, views, or arguments with opportunity to present oral testimony and argument. The Council shall make its regulations under this chapter on the basis of the record established in proceedings held pursuant to this subsection. (July 30, 1968, Pub. L. 90–440, § 3, 82 Stat. 458.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6–813.

§ 6–813. Air pollution control program for the District of Columbia.

(a) The Commissioner of the District of Columbia (hereafter referred to in this chapter as the "Commissioner") shall take such action as may be necessary to prepare a comprehensive program for the control and prevention of air pollution in the District of Columbia. Such program shall provide for the administration and enforcement by the Commissioner of the regulations prescribed by the Council under section 6–812. As part of such program, the Commissioner—

(1) shall conduct research, investigations, experiments, training demonstrations, surveys, and studies, relating to the causes, effects, extent, prevention, and control of air pollution in the District of Columbia;

(2) shall collect and make available, through publications, educational and training programs, and other appropriate means, the results of, and other information pertaining to, the activities carried out under paragraph (1);

(3) shall establish, in accordance with such regulations as the Council may prescribe, such procedures as may be necessary to enable him (acting by himself or with air pollution control agencies of surrounding jurisdictions) to effectively deal with an air pollution emergency; and

(4) may advise, consult, cooperate, and enter into agreements with the governments and agencies of any State or political subdivision thereof adjacent to the District of Columbia and any interstate or other regional agency representing any such State or political subdivision to (A) establish cooperative effort and mutual assistance for the prevention and control of air pollution and the enforcement of their respective laws relating thereto, and (B) establish such agencies as may be necessary to carry out such agreements.

(b) For the purpose of carrying out his duties under this chapter, the Commissioner may—

(1) delegate the performance of such duties to an agency of the government of the District of Columbia, designated or established by him;

(2) issue such orders as may be necessary to enforce the regulations prescribed by the Council under this chapter and enforce such orders by all appropriate administrative and judicial proceedings, including injunctive relief;

(3) hold hearings relating to the administration of this chapter;

(4) secure necessary scientific, technical, administrative, and operational services, including laboratory facilities, by contract, or otherwise;

(5) receive and administer grants or gifts made for the purpose of carrying out the purposes of this chapter; and

(6) take any other action which may be necessary to carry out his duties under this chapter.

(July 30, 1968, Pub. L. 90–440, § 4, 82 Stat. 459.)

TRANSFER OF FUNCTIONS

For provisions regarding the duties of the Director of Public Health in relation to development of a program for the prevention and control of air pollution see Org. Ord. 141, set out in the appendix to title 1.

Chapter 9.—WEEDS AND PLANT DISEASES

§ 6–901. Weeds four or more inches high to be cut by person in charge of property—Notice—Penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6–903.

§ 6–902. Removal of weeds by Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 6–903.

§ 6–903. Prosecutions.

Prosecutions under sections 6–901 to 6–903 shall be in the Superior Court of the District of Columbia, upon information filed by the corporation counsel for said District or one of his assistants. (Mar. 1, 1899, 30 Stat. 959, ch. 326, § 3; Mar. 3, 1901, 31 Stat. 1340, ch. 854, § 932; June 30, 1902, 32 Stat. 537, ch. 1329; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 6–904. Plant diseases and insect pest control.

In order further to control and eradicate and to prevent the dissemination of dangerous plant diseases and insect infections and infestations no plant or plant products for or capable of propagation, including nursery stock, hereinafter referred to as plants and plant products, shall be moved or allowed to be moved, shipped, transported, or carried by any means whatever into or out of the District of Columbia, except in compliance with such rules and regulations as shall be prescribed by the Secretary of Agriculture as hereinafter provided. Whenever the Secretary of Agriculture, after investigation, shall determine that any plants and plant products in the District of Columbia are infested or infected with insect pests and diseases and that any place, articles, and substances used or connected therewith are so infested or infected, written notice thereof shall be given by him to the owner or person in possession or control thereof, and such owner or person shall forthwith control or eradicate and prevent the dissemination of such insect pest or disease and shall remove, cut, or destroy such infested and infected plants, plant products, and articles and substances used or connected therewith, which are hereby declared to be nuisances, within the time and in the manner required in said notice or by the rules and regulations of the Secretary of Agriculture. Whenever such owner or person can not be found, or shall fail, neglect, or refuse to comply with the foregoing provisions of this section, the Secretary of Agriculture is hereby authorized and required to control and eradicate and prevent dissemination of such insect pest or disease and to remove, cut, or destroy infested or infected plants and plant products and articles and substances used or connected therewith, and the United States shall have an action of debt against such owner or persons for expenses incurred by the Secretary of Agriculture in that behalf. Employees of the Bureau of Entomology and Plant Quarantine are hereby authorized and required to inspect places, plants, and plant products and articles and substances used or connected therewith whenever the Secretary of Agriculture shall determine that such inspections are necessary for the purposes of this section. For the purpose of carrying out the provisions and requirements of this section and of the rules and regulations of the Secretary of Agriculture made hereunder, and the notices given pursuant thereto, employees of the Bureau of Entomology and Plant Quarantine shall have power with a warrant to enter into or upon any place and open any bundle, package, or other container of plants or plant products whenever they shall have cause to believe that infections or infestations of plant pests and diseases exist therein or thereon, and when such infections or infestations are found to exist, after notice by the Secretary of Agriculture to the owner or person in possession or control thereof and an opportunity by said owner or person to be heard, to destroy the infected or infested plants or plant products contained therein. The Superior Court of the District of Columbia shall have power, upon information supported by oath or affirmation showing probable cause for believing that there exists in any place, bundle, package, or other container in the District of Columbia any plant or plant product which is infected or infested with plant pests or disease, to issue warrants for the search for and seizure of all such plants and plant products.

It shall be the duty of the Secretary of Agriculture, and he is hereby required, from time to time, to make and promulgate such rules and regulations as shall be necessary to carry out the purposes of this section, and any person who shall move or allow to be moved, or shall ship, transport, or carry, by any means whatever, any plant or plant products from or into the District of Columbia, except in compliance with the rules and regulations prescribed under this section, shall be punished, as is provided in section 6–905. (Aug. 20, 1912, ch. 308, § 15, as added May 31, 1920, 41 Stat. 726, ch. 217, and amended May 16, 1928, 45 Stat. 565, ch. 572; July 7, 1932, 47 Stat. 640, ch. 443; Mar. 26, 1934, 48 Stat. 486, ch. 89; Apr. 1, 1942, 56 Stat. 190, 192, ch. 207, §§ 1—4; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CROSS REFERENCE

Search warrants, generally, see §§ 23–521 to 23–525.

Chapter 10.—BLACK-OUTS IN WAR TIME

§ 6–1001. Commissioners authorized to order black-outs—Regulations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–1002. Cooperation with Maryland and Virginia.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–1006. Appointment of special police during war.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–1007. Volunteer services for government of District during war.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–1008. Evacuation from District during war.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–1009. Establishment of organizations for civilian defense—Use of District of Columbia employees—Right of eminent domain—Funds for supplies and personnel—Hospitalization—Use of private property.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(145 and 146) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to make rules and regulations as provided in the preamble to the section, and to make regulations as provided in subsection (a), to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 6–1010. Penalties for violation of chapter.

The Commissioners shall have the power to prescribe reasonable penalties for violation of any regulation promulgated pursuant to this chapter, not exceeding a fine of $300 or ninety days' imprisonment, or both. Prosecution for such violations shall be on information in the Superior Court of the District of Columbia by the corporation counsel or his assistants. (Dec. 26, 1941, 55 Stat. 860, ch. 625, § 10; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(147) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 6–1013. Extent of power and duties of Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–1014. Limitation on expenditures.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 11.—FEDERAL GOVERNMENT RESTAURANTS

§ 6–1101. Health regulations applicable to federal government restaurants—Exceptions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 12.—OFFICE OF CIVIL DEFENSE

§ 6–1202. Office of civil defense authorized—Director and other personnel—Compensation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–1202a. Appointment of member of Metropolitan Police Department or member of Fire Department to position in office performing functions of Office of Civil Defense.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–1203. Powers and duties.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 section 1304 of the U.S. Code.

§ 6–1206. Yearly report of activities and expenditures.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 6–1207. Interstate civil defense compacts.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 13.—CANCER AND MALIGNANT NEOPLASTIC DISEASES

§ 6–1301. Commissioners authorized to promulgate regulations requiring reports.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(148) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 6–1304. Penalties for violations.

The said Commissioners are authorized to prescribe a reasonable penalty or fine, not to exceed $100, for the violation of any regulation promulgated under the authority of this chapter, and all prosecutions for violations of such regulations shall be in the criminal branch of the Superior Court of the District of Columbia in the name of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants. (July 27, 1951, 65, Stat. 124, ch. 241, § 4; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(149) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 14.—REGISTER OF BLIND PERSONS

Sec.

6–1401. Establishment of register—Council to prescribe regulations—Information to be contained in register.
6–1402. Reports regarding blind persons to be filed by public institutions, physicians, osteopaths and optometrists—Register to be confidential—Availability of abstracts or digests of register.
6–1403. Definitions.
6–1404. Liability of persons making reports.

§ 6–1401. Establishment of register—Council to prescribe regulations—Information to be contained in register.

That the Commissioner of the District of Columbia shall establish and maintain a register of blind persons residing in the District of Columbia. Such register shall, under regulations prescribed by the District of Columbia Council, provide information of such nature as will or may be of assistance in the planning of improved facilities and services for blind persons and in the restoration and conservation of sight. (Aug. 3, 1968, Pub. L. 90–458, § 1, 82 Stat. 633.)

EFFECTIVE DATE

Section 5 of act Aug. 3, 1968, Pub. L. 90–458, provided: "This Act (sections 6–1401 to 6–1404) shall take effect on the first day of the first month which begins on or after the thirtieth day after the date of the enactment."

TRANSFER OF FUNCTIONS

Establishment, maintenance and administration of a register of blind persons by the Department of Vocational Rehabilitation, see Org. Ord. No. 104, set out in the appendix to title 1.

§ 6–1402. Reports regarding blind persons to be filed by public institutions, physicians, osteopaths and optometrists—Register to be confidential—Availability of abstracts or digests of register.

Each—

(1) health, educational, and social service agency or institution operating in the District of Columbia and having in its care or custody (either full or part time), or rendering service to, any blind person,

(2) physician and osteopath licensed or registered by the District of Columbia who has in his professional care for diagnosis or treatment such a person, and

(3) optometrist licensed by the District of Columbia who, in the course of his practice of optometry, ascertains that a person is blind,

shall report in writing to the Commissioner the name, age, and residence of such person and such additional information as the Council may, by regulation, require for incorporation in the register referred to in the first section. Such register and reports shall not be open to public inspection. The Commissioner may make available in the form of statistical abstracts or digests information contained in such register and reports if the identity of persons referred to in such register or reports is not disclosed in such abstracts or digests. (Aug. 3, 1968, Pub. L. 90–458, § 2, 82 Stat. 633.)

EFFECTIVE DATE

See note under section 6–1401.

§ 6–1403. Definitions.

For the purpose of this chapter—

(1) the term "blind person" means, and the term "blind" refers to, a person who (A) is totally blind, (B) has impaired vision of not more than 20/200 visual acuity in the better eye and for whom vision cannot be improved to better than 20/200, or (C) who has loss of vision due wholly or in part to impairment of field vision or to other factors which affect the usefulness of vision to a like degree,

(2) the term "Commissioner" means the Commissioner of the District of Columbia or his designated agent, and

(3) the term "Council" means the District of Columbia Council.

(Aug. 3, 1968, Pub. L. 90–458, § 3, 82 Stat. 633.)

EFFECTIVE DATE

See note under section 6–1401.

§ 6–1404. Liability of persons making reports.

Any person who in good faith makes a report pursuant to this chapter or pursuant to any regulation promulgated under the authority of this chapter, shall not, by reason thereof, be personally liable in damages. (Aug. 3, 1968, Pub. L. 90–458, § 4, 82 Stat. 633.)

EFFECTIVE DATE

See note under section 6–1401.

TITLE 7.—HIGHWAYS, STREETS, BRIDGES

Chap. Sec.

9. Rental and Utilization of Public Space..... 7–902
15. Potomac River Basin Compact..... 7–1501

Chapter 1.—HIGHWAY PLANS

Sec.

7–135. Federal-aid highway projects—Commissioner's authority to provide certain payments and services.

7–136. Authority to acquire and transfer to Secretary of the Interior real property in exchange for real property transferred to the District—Payments in lieu of transfer of property.

§ 7–101. Commissioners to have control of streets—Power to make regulations for repairs.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(150) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to making of regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

NOTES TO DECISIONS

Compliance with Federal-aid highway statute

The fact that the action of the District of Columbia City Council in approving the Three Sisters Bridge was a direct result of congressional pressure and threats regarding rapid transit appropriations does not, in and of itself, establish noncompliance by the Council with the requirements of the federal-aid highway statute *D.C. Federation of Civic Associations, Inc., et al.* v. *J. A. Volpe et al.* (1970, 316 F. Supp. 754).

Construction with other laws

Section 23 of the act of Aug. 23, 1968, Pub. L. 90–495, providing in part that, notwithstanding any other provision of law, the Secretary of Transportation and government of District of Columbia should construct all routes of interstate system as soon as possible and "in accordance with all applicable provisions of Title 23 of the United States Code." and that District of Columbia should commence work on bridge meant that construction of bridge should proceed forthwith and did not require further compliance with planning or hearing requirements of Title 23 of the United States Code. *D.C. Federation of Civic Associations et al.* v. *J. A. Volpe et al.* (1970, 308 F. Supp. 423).

District officials may not disregard requirements of title 7

District of Columbia officials responsible for planning and construction of highway projects in the District had not been authorized by Congress by ratification by appropriation to disregard requirements of title 7 of the District of Columbia Code, relating to highways, streets and bridges, in the planning and construction of four links of proposed District of Columbia freeway system. *D.C. Federation of Civic Associations, Inc., et al.* v. *T. F. Airis, Director etc.* (1968, 391 F. 2d 478, 129 U.S. App. D.C. 125).

Federal-Aid Highway acts have not given authority to District of Columbia officials responsible for planning and construction of highway projects in the District to proceed with planning and construction of four links of proposed District of Columbia freeway system without regard for title 7 of the District of Columbia Code relating to highways, streets and bridges. *Id.*

§ 7–102. Commissioners to have jurisdiction over public roads and bridges—Exceptions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Care of streets and sidewalks

In denying a motion by the defendant, District of Columbia, for Judgment Notwithstanding the Verdict or in the alternative for a New Trial, the court held that the District of Columbia has primary responsibility for maintaining streets and sidewalks in reasonably safe condition, regardless of who owns the fee in such streets and sidewalks, in absence of special circumstances such as accumulation of snow or ice or improvement of the way in question by the United States. *J. M. Conner et al.* v. *United States et al.* (1970, 309 F. Supp. 446).

§ 7–106. Commissioners may change names of streets when two streets have same name.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(151) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 7–107. Commissioners to name streets outside of city limits.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(152) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 7–108. Permanent highway plan—Preparation by Commissioners—Width of highways.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(153) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the extent provided in par. 153, to the District of

Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

NOTES TO DECISIONS

Construction

Section 7–108 to 7–112, was intended to regulate wide Interstate Expressways. *D.C. Federation of Civic Associations, Inc., et al.* v. *T. F. Airis, Director etc.* (1968, 391 F. 2d 478, 129 U.S. App. D.C. 125).

Construction with other laws

Federal-Aid Highway legislation is not inconsistent with District of Columbia Code sections limiting highway width to 160 feet, or with Code section directing the District government to assess land-owners abutting newly constructed highways for additional benefits. *D.C. Federation of Civic Associations, Inc., et al.* v. *T. F. Airis, Director etc.* (1968, 391 F. 2d 478, 129 U.S. App. D.C. 125.)

Preparation, filing, and certification of plans

District of Columbia statutes requiring preparation by the commissioners of the district of a plan for permanent system of highways, that map depicting the system be filed and be certified to the National Capital Planning Commission for recommendations are applicable to local highway improvements but do not apply to highway improvements constructed with federal aid. *D.C. Federation of Civic Associations, et al.* v. *T. F. Airis, et al.* (1967, 275 F. Supp. 533). But see contrary holding in 391 F. 2d 478.

Federal statute setting forth steps to be undertaken by states for the approval of highways to be constructed with federal aid are applicable to the District of Columbia. *Id.*

Suit to restrain expenditure of funds for highway projects

Civic associations did not have standing to sue District of Columbia officials to restrain expenditure of municipal funds for highway projects. *D.C. Federation of Civic Associations et al.* v. *T. F. Airis, et al.* (1967, 275 F. Supp. 533). But see decision of the court in 391 F. 2d 478.

Property owners whose property may be condemned for proposed freeways had no valid claim to equitable relief to restrain expenditures of municipal funds for highway projects as they had an adequate remedy of law by contesting condemnation proceeding, if and when one was brought. *Id.*

Property owners who owned property the value of which might be reduced by proposed highway projects did not have any legal personal rights that were being adversely affected and such owners did not have standing to maintain suit against District of Columbia officials to restrain expenditure of municipal funds for proposed highway projects. *Id.*

Users of public parks within sites of proposed highway projects who contended that their rights to use the parks would be interfered with by construction had no rights separate and apart from those of the rest of the public and park users had no standing to sue to restrain District of Columbia officials from expending municipal funds for proposed highway project. *Id.*

Central committee of political party which was not incorporated was not an entity and had no capacity to sue or be sued and could not maintain action against District of Columbia officials to restrain expenditure of municipal funds for construction of proposed highway projects. *Id.*

Taxpayers of District of Columbia had standing to maintain suit against District of Columbia officials, but not federal officials, to restrain expenditure of funds for proposed highway projects to be constructed with municipal and federal funds. *Id.*

If District of Columbia officials were not taking any step forbidden by law by the expenditure of funds for construction and planning of proposed highway projects, they were acting in accordance with law and taxpayers' suit to restrain expenditure of funds should be determined in favor of District of Columbia for the court has no authority to consider the merits of the projects as that is entirely and solely for consideration of legislative and executive branches of the government. *Id.*

§ 7–109. Permanent highway—Plans to be prepared in sections—Conformity to subdivisions—Plans to be submitted to National Capital Planning Commission—Recordation—Landowners to submit plat of proposed highways.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Construction

Sections 7–108 to 7–112 was intended to regulate wide Interstate Expressways. *D.C. Federation of Civic Associations, Inc., et al.* v. *T. F. Airis, Director etc.* (1968, 391 F. 2d 478, 129 U.S. App. D.C. 125).

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Property owners whose property may be condemned for proposed freeways had no valid claim to equitable relief to restrain expenditures of municipal funds for highway projects as they had an adequate remedy of law by contesting condemnation proceeding, if and when one was brought. *Id.*

Property owners who owned property the value of which might be reduced by proposed highway projects did not have any legal personal rights that were being adversely affected and such owners did not have standing to maintain suit against District of Columbia official to restrain expenditure of municipal funds for proposed highway projects. *Id.*

Users of public parks within sites of proposed highway projects who contended that their rights to use the parks would be interfered with by construction had no rights separate and apart from those of the rest of the public and park users had no standing to sue to restrain District of Columbia officials from expending municipal funds for proposed highway project. *Id.*

Central committee of political party which was not incorporated was not an entity and had no capacity to sue or be sued and could not maintain action against District of Columbia officials to restrain expenditure of municipal funds for construction of proposed highway projects. *Id.*

Taxpayers of District of Columbia had standing to maintain suit against District of Columbia officials, but not federal officials, to restrain expenditure of funds for proposed highway projects to be constructed with municipal and federal funds. *Id.*

If District of Columbia officials were not taking any step forbidden by law by the expenditure of funds for construction and planning of proposed highway projects, they were acting in accordance with law and taxpayers' suit to restain expenditure of funds should be determined in favor of District of Columbia for the court has no authority to consider the merits of the projects as that is entirely and solely for consideration of legislative and executive branches of the government. *Id.*

§ 7–110. Adoption of subdivision by reference in will or deed.

NOTES TO DECISIONS

Construction

Sections 7–108 to 7–112 were intended to regulate wide Interstate Expressways. *D.C. Federation of Civic Associations, Inc., et al.* v. *T. F. Airis, Director etc.* (1968, 391 F. 2d 478, 129 U.S. App. D.C. 125).

§ 7–111. Entry upon property authorized for purposes of survey.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Construction

Sections 7–108 to 7–112 were intended to regulate wide Interstate Expressways. *D.C. Federation of Civic Associations, Inc., et al.* v. *T. F. Airis, Director etc.* (1968, 391 F. 2d 478, 129 U.S. App. D.C. 125).

§ 7–112. Commissioners authorized to name streets.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(154) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

NOTES TO DECISIONS

Construction

Sections 7–108 to 7–112 were intended to regulate wide Interstate Expressways. *D.C. Federation of Civic Associations, Inc., et al.* v. *T. F. Airis, Director etc.* (1968, 391 F. 2d 478, 129 U.S. App. D.C. 125).

§ 7–113. Abandonment or readjustment of streets to provide ground for educational, religious, or similar institutions.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(155) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to abandoning or readjusting streets or proposed streets, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 7–114. Use of property by owner until condemnation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–115. Public notice to owners of plan—Opportunity to be heard.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–116. Powers may be exercised through Beatty and Hawkins's addition to Georgetown.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(154 and 156) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 7–117. Acceptance of dedicated streets—Building restrictions—Right-of-way for sewers and water-mains.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(157) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7–907, 7–924.

§ 7–119. Resubdivision of property affected by highway plan pending condemnation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–122. New highway plans authorized.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(158) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to determine the extent to which new highway plans may be out of conformity with the street plan, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

NOTES TO DECISIONS

Preparation, filing and certification of plans

District of Columbia statutes requiring preparation by the commissioners of the district of a plan for permanent system of highways, that map depicting the system be filed and be certified to the National Capital Planning Commission for recommendations are applicable to local highway improvements but do not apply to highway improvements constructed with federal aid. *D.C. Federation of Civic Associations et al.* v. *T. F. Airis et al.* (1967, 275 F. Supp. 533). But see decision of the court in 391 F. 2d 478.

Federal statute setting forth steps to be undertaken by states for the approval of highways to be constructed with federal aid are applicable to the District of Columbia. *Id.*

Suit to restrain expenditure of funds for highway projects

Civic associations did not have standing to sue District of Columbia officials to restrain expenditure of municipal funds for highway projects. *D. C. Federation of Civic Associations et al.* v. *T. F. Airis et al.* (1967, 275 F. Supp. 533). But see decision of the court in 391 F. 2d 478.

Property owners whose property may be condemned for proposed freeways had no valid claim to equitable relief to restrain expenditures of municipal funds for highway projects as they had an adequate remedy of law by contesting condemnation proceeding, if and when one was brought. *Id.*

Property owners who owned property the value of which might be reduced by proposed highway projects did not have any legal personal rights that were being adversely affected and such owners did not have standing to maintain suit against District of Columbia official to restrain expenditure of municipal funds for proposed highway projects. *Id.*

Users of public parks within sites of proposed highway projects who contended that their rights to use the parks would be interfered with by construction had no rights

separate and apart from those of the rest of the public and park users had no standing to sue to restrain District of Columbia officials from expending municipal funds for proposed highway project. *Id.*

Central committee of political party which was not incorporated was not an entity and had no capacity to sue or be sued and could not maintain action against District of Columbia officials to restrain expenditure of municipal funds for construction of proposed highway projects. *Id.*

Taxpayers of District of Columbia had standing to maintain suit against District of Columbia officials, but not federal officials, to restrain expenditure of funds for proposed highway projects to be constructed with municipal and federal funds. *Id.*

If District of Columbia officials were not taking any step forbidden by law by the expenditure of funds for construction and planning of proposed highway projects, they were acting in accordance with law and taxpayers' suit to restrain expenditure of funds should be determined in favor of District of Columbia for the court has no authority to consider the merits of the projects as that is entirely and solely for consideration of legislative and executive branches of the government. *Id.*

§ 7–123. Commissioners of the District of Columbia to close certain streets, roads, or highways in the District of Columbia rendered useless or unnecessary by the highway plan—Consent of owners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–124. Plat to be filed—Assessment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–125. Subdivision to conform to plan of Washington—Approval of Commission.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–126. District of Columbia authorized to use certain land owned by United States for street purposes.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–127. Relocation of Michigan Avenue—Relocation authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–128. Use of part of Soldiers' Home.

TRANSFER OF FUNCTIONS

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–129. Portion of Michigan Avenue abandoned.

TRANSFER OF FUNCTIONS

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–130. Surveyor to prepare plats showing relocation of Michigan Avenue—Recordation of plats to transfer title.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–131. Right-of-way to Washington Railway and Electric Company.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–133. Loans for the District of Columbia highway construction program—Availability—Repayment—Interest—Budget estimates.

(a) To assist in financing such program of construction, the Commissioners are hereby authorized to accept loans for the District from the United States Treasury and the Secretary of the Treasury is hereby authorized to lend to the Commissioners such sums as may hereafter be appropriated: *Provided,* That the total principal amount of loans advanced pursuant to this section shall not exceed $110,000,000: *Provided, further,* That any loan for use in any fiscal year must first be specifically requested of the Congress in connection with the budget submitted for the District for such fiscal year with a full statement of the work contemplated to be done and the need thereof, and such work must be approved by the Congress: *And providing further,* That such approval shall not be construed to alter or to eliminate the procedures for consultation, advice, and recommendation provided in sections 1–1001 to 1–1013. Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in full in the Treasury of the United States to the credit of the Highway Fund.

* * * * *

(As amended Jan. 5, 1971, Pub. L. 91–650, title I, § 103(c), 84 Stat. 1930.)

AMENDMENT

1971—Section 103(c) of Act Jan. 5, 1971, Pub. L. 91–650, amended subsec. (a) by striking out "$85,250,000" and inserting in lieu thereof "$110,000,000".

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of Act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–134. Use of land in squares 354 and 355 for Southwest Freeway and for redevelopment of Southwest area of District.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–135. Federal-aid highway projects—Commissioner's authority to provide certain payments and services.

For the purpose of enabling the District of Columbia to have its Federal-aid highway projects approved under section 106 or 117 of title 23, United States Code, the Commissioner of the District of Columbia may, in connection with the acquisition of real property in the District of Columbia for any Federal-aid highway project, provide the payments

and services described in sections 505, 506, 507, and 508 of title 23, United States Code. (Aug. 23, 1968, Pub. L. 90–495, § 23(d), 82 Stat. 827.)

REFERENCE IN TEXT

Sections 505, 506, 507, and 508 of title 23, United States Code, referred to in text and which related to relocation payments and assistance, were a part of chapter 5 of title 23. That chapter was repealed by section 220(a)(10) of the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Pub. L. 91–646, 84 Stat. 1903). Section 209 of that Act, which enacted new provisions relating to relocation payments and assistance to persons displaced by public works programs and projects of the District of Columbia Government and the Washington Metropolitan Area Transit Authority, is classified to § 5–732a of this code and to 42 U.S.C. 4629.

CODIFICATION

The text of the above section is taken from section 23(d) of the "Federal-Aid Highway Act of 1968," Pub. L. 90–495. For classification of this act, see tables in U.S. Code.

EFFECTIVE DATE

Section 37, of act Aug. 23, 1968, Pub. L. 90–495, provided: "This Act [The Federal-Aid Highway Act of 1968, section 23(a)(b)(c) of which is set out as a note to this section; and subsection (d) is classified to this section and (e)(f) thereof is classified as sec. 7–136] and the amendments made by this Act shall take effect on the date of its enactment [Aug. 23, 1968], except that until July 1, 1970, sections 502, 505, 506, 507, and 508 of title 23, United States Code, as added by this Act, shall be applicable to a State only to the extent that such State is able under its laws to comply with such sections. After July 1, 1970, such sections shall be completely applicable to all States. Section 133 of title 23, United States Code, shall not apply to any State if sections 502, 505, 506, 507, and 508 of title 23, United States Code, are applicable in that State, and effective July 1, 1970, such section 133 is repealed."

CONSTRUCTION OF CERTAIN PROJECTS

Section 23(a)(b)(c) of the act of Aug. 23, 1968, Pub. L. 90–495, being a part of the "Federal-Aid Highway Act of 1968" provided:

"(a) Notwithstanding any other provision of law, or any court decision or administrative action to the contrary, the Secretary of Transportation and the government of the District of Columbia shall, in addition to those routes already under construction, construct all routes on the Interstate System within the District of Columbia as set forth in the document entitled '1968 Estimate of the Cost of Completion of the National System of Interstate and Defense Highways in the District of Columbia' submitted to Congress by the Secretary of Transportation with, and as a part of, 'The 1968 Interstate System Cost Estimate' printed as House Document Numbered 199, Ninetieth Congress. Such construction shall be undertaken as soon as possible after the date of enactment of this Act, except as otherwise provided in this section, and shall be carried out in accordance with all applicable provisions of title 23 of the United States Code.

"(b) Not later than 30 days after the date of enactment of this section the government of the District of Columbia shall commence work on the following projects:

"(1) Three Sisters Bridge, I–266 (Section B1 to B2).

"(2) Potomac River Freeway, I–266 (Section B2 to B4).

"(3) Center Leg of the Inner Loop, I–95 (Section A6 to C4), terminating at New York Avenue.

"(4) East Leg of the Inner Loop, I–295 (Section C1 to C4), terminating at Bladensburg Road.

"(c) The government of the District of Columbia and the Secretary of Transportation shall study those projects on the Interstate System set forth in 'The 1968 Interstate System Cost Estimate', House Document Numbered 199, Ninetieth Congress, within the District of Columbia which are not specified in subsection (b) and shall report to Congress not later than 18 months after the date of enactment of this section their recommendations with respect to such projects including any recommended alternative routes or plans, and if no such recommendations are submitted within such 18-month period then the Secretary of Transportation and the government of the District of Columbia shall construct such routes, as soon as possible thereafter, as required by subsection (a) of this section."

RESTUDY OF CERTAIN PROJECTS AND REPORT TO CONGRESS NOT LATER THAN DEC. 31, 1971

Section 129 of Act Dec. 31, 1970, Pub. L. 91–605, being a part of the "Federal-Aid Highway Act of 1970", provided:

(a) In the case of the following routes on the Interstate System in the District of Columbia authorized for construction by section 23 of the Federal-aid Highway Act of 1968, the government of the District of Columbia and the Secretary of Transportation shall restudy such projects and report to Congress not later than 12 months after the date of enactment of this subsection their recommendations with respect to such projects, including any alternative routes or plans:

(1) East Leg of the Inner Loop, beginning at Bladensburg Road, I–295 (section C4.1 to C6),

(2) North Central and Northeast Freeways, I–95 (section C7 to C13) and I–70S (section C1 to C2).

(b) The government of the District of Columbia and the Secretary of Transportation shall study the project for the North Leg of the Inner Loop from point A3.3 on I–66 to point C7 on I–95, as designated in the "1968 Estimate of the Cost of Completion of the National System of Interstate and Defense Highways in the District of Columbia", and shall report to Congress not later than 12 months after the date of enactment of this subsection their recommendations with respect to such project including any recommended alternative routes or plans.

CROSS REFERENCES

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, see § 5–732a of this code and 42 U.S.C. 4601 et seq.

NOTES TO DECISIONS

Compliance with Federal-aid highway statute

The fact that the action of the District of Columbia City Council in approving the Three Sisters Bridge was a direct result of congressional pressure and threats regarding rapid transit appropriations does not, in and of itself, establish noncompliance by the Council with the requirements of the federal-aid highway statute. *D.C. Federation of Civic Associations, Inc., et al.* v. *J. A. Volpe et al.* (1970, 316 F. Supp. 754.).

Construction with other laws

Section 23 of the act of Aug. 23, 1968, Pub. L. 90–495, providing in part that, notwithstanding any other provision of law, the Secretary of Transportation and government of District of Columbia should construct all routes of interstate system as soon as possible and "in accordance with all applicable provisions of Title 23 of the United States Code" and that District of Columbia should commence work on bridge meant that construction of bridge should proceed forthwith and did not require further compliance with planning or hearing requirements of Title 23 of the United States Code. *D.C. Federation of Civic Associations et al.* v. *J. A. Volpe et al.* (1970, 308 F. Supp. 423).

§ 7–136. Authority to acquire and transfer to Secretary of the Interior real property in exchange for real property transferred to the District—Payments in lieu of transfer of property.

The Commissioner of the District of Columbia is authorized to acquire by purchase, donation, condemnation or otherwise, real property for transfer to the Secretary of the Interior in exchange or as replacement for park, parkway, and playground lands transferred to the District of Columbia for a public purpose pursuant to section 8–115 and the Commissioner is further authorized to transfer to the United States title to property so acquired.

Payments are authorized to be made by the Commissioner, and received by the Secretary of the Interior, in lieu of property transferred pursuant to the first paragraph of this section. The amount of such payment shall represent the cost to the Secretary of the Interior of acquiring real property suitable for replacement of the property so transferred as agreed upon between the Commissioner and the head of said agency and shall be available for the acquiring of the replacement property. (Aug. 23, 1968, Pub. L. 90–495, § 23(e)(f), 82 Stat. 828.)

CODIFICATION

The text of the above section is taken from section 23 (e) and (f) of the "Federal-Aid Highway Act of 1968," Pub. L. 90–495. For classification of this act, see tables in U.S. Code.

EFFECTIVE DATE

See note to section 7–135.

CROSS REFERENCE

Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, see § 5–732a of this code and 42 U.S.C. 4601 et seq.

Chapter 2.—LAND FOR STREETS

§ 7–201. Commissioners may open, extend, or widen streets, avenues, roads, or highways according to permanent system of highways—Damages and costs assessed as benefits—Damages and costs paid from revenues of District—Repaid from assessments.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(159) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

NOTES TO DECISIONS

Construction with other laws

Federal-Aid Highway legislation is not inconsistent with District of Columbia Code sections limiting highway width to 160 feet, or with Code section directing the District government to assess land-owners abutting newly constructed highways for additional benefits. *D.C. Federation of Civic Associations, Inc., et al.* v. *T. F. Airis Director etc.* (1968, 391 F. 2d 478, 129 U.S. App. D.C. 125).

District officials may not disregard requirements of title 7

District of Columbia officials responsible for planning and construction of highway projects in the District had not been authorized by Congress by ratification by appropriation to disregard requirements of Title 7 of the District of Columbia Code, relating to highways, streets and bridges, in the planning and construction of four links of proposed District of Columbia freeway system. *D.C. Federation of Civic Associations, Inc., et al.* v. *T. F. Airis, Director etc.* (1968, 391 F. 2d 476, 129 U.S. App. D.C. 125).

Federal-Aid Highway acts have not given authority to District of Columbia officials responsible for planning and construction of highway projects in the District to proceed with planning and construction of four links of proposed District of Columbia freeway system without regard for title 7 of the District of Columbia Code relating to highways, streets and bridges. *Id.*

§ 7–202. Condemnation of land for streets.

Whenever land is needed for the opening, extension, widening, or straightening of any street, avenue, road, or highway in the District of Columbia, authorized by Congress, the Commissioners of the District of Columbia may institute in the Superior Court of the District of Columbia, by petition, a proceeding in rem for the condemnation of the land needed. (Mar. 3, 1901, ch. 854, § 491a, as added Apr. 30, 1906, 34 Stat. 151, ch. 2070, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(1)(A), 84 Stat. 570.)

AMENDMENT

1970—Section 155(c)(1)(A) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7–405, 16–1336.

§§ 7–203, 7–204.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 16–1336.

§ 7–205. Jury—Drawing—Oath.

After the return of the marshal and filing of proof of publication of the notice provided for in section 7–204, the court shall order the selection of a condemnation jury as provided in section 16–1312. The jury shall consist of five persons and each juror shall take an oath or affirmation that he is not interested in any manner in the land to be condemned, is not related to the parties interested therein, and will fairly and impartially ascertain the damages each owner of land to be taken may sustain by reason of the opening, extension, widening, or straightening of the street, avenue, road, or highway, and the condemnation of land needed for the purpose thereof and to assess the benefits resulting therefrom as hereinafter provided. (Mar. 3, 1901, ch. 854, § 491d, as added Apr. 30, 1906, 34 Stat. 152, ch. 2070, and amended Apr. 19, 1920, 41 Stat. 566, ch. 153; July 29, 1970, Pub. L. 91–358, § 166(d), title I, 84 Stat. 587.)

AMENDMENT

1970—Section 166(d) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1336.

§§ 7–206 to 7–208.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 16–1336.

§ 7–209. Objections—Exceptions—When filed—Court may vacate verdict and grant new trial—Vacated in part.

The said court shall hear and determine any objections or exceptions that may be filed to any verdict of the jury and shall have power to vacate and set any verdict aside, in whole or in part, when satis-

fied that it is unjust or unreasonable, in which event the court shall order the selection in accordance with section 7–205 of a new jury of five capable and disinterested persons, who shall proceed to ascertain the damages or assess the benefits, or both, as the case may be, in respect of the land as to which the verdict may be vacated, as in the case of the first jury: *Provided,* That if vacated in part, the residue of the verdict as to the land condemned or assessed shall not be affected thereby: *And provided further,* That the objections or exceptions to the verdict shall be filed within twenty days after the return of the verdict to the court. (Mar. 3, 1901, ch. 854, § 491h, as added Apr. 30, 1906, 34 Stat. 153, ch. 2070, and amended Apr. 19, 1920, 41 Stat. 566, ch. 153; July 29, 1970, Pub. L. 91–358, § 166(e), title I, 84 Stat. 587.)

AMENDMENT

1970—Section 166(e) of Act July 29, 1970, Public Law 91–358 amended section by striking out "shall order the jury commission to draw from the special box the names of as many persons as the court may direct, and from among the persons so drawn the court shall thereupon appoint" and inserting in lieu thereof "shall order the selection in accordance with section 491d [7–205] of".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1336.

§ 7–210. Confirmation of verdict—Payment of award.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1336.

§ 7–211. Assessments made liens—How paid—Set-off of damages and benefits.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1336.

§ 7–212. Power to amend proceedings.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1336.

§ 7–213a. Repealed. Mar. 27, 1968, Pub. L. 90–274, § 103 (a), 82 Stat. 62.

Section, act July 30, 1951, 65 Stat. 126, ch. 248 § 2, dealt with fees of jurors in eminent domain cases instituted by or behalf of the District of Columbia.

EFFECTIVE DATE OF REPEAL AND APPLICABILITY IN CERTAIN CASES

Section 104, act Mar. 27, 1968, Pub. L. 90–274, provided that: "This Act [Repealing, §§ 7–213a, 13–701, 11–2301 through 11–2305 (except the last par. of 11–2302) 11–2307 through 11–2312, amending §§ 7–318, 11–2306, 16–1312, 16–1357 and 22–1414] shall become effective two hundred and seventy days after the date of enactment: *Provided,* That this Act shall not apply in any case in which an indictment has been returned or petit jury empaneled prior to such effective date."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1336.

§ 7–214. Right to appeal—Parties not appealing.

Any party aggrieved by any final order of the court may appeal therefrom to the District of Columbia Court of Appeals; but no appeal from any order of the court confirming any award of damages or assessment for benefits, nor any other proceeding that may be taken by any person, at law or in equity, against the confirmation of any award of damages or any assessment for benefits shall delay or prevent the payment of the damages awarded to other persons in respect of the property condemned, or delay or prevent the taking of the property sought to be condemned, or delay or prevent the opening, extension, widening, or straightening of the street, avenue, road, or highway. (Mar. 3, 1901, ch. 854, § 491m, as added Apr. 30, 1906, 34 Stat. 153, ch. 2070, and amended June 7, 1934, 48 Stat. 926, ch. 426; July 29, 1970, Pub. L. 91–358, title I, § 166(f), 84 Stat. 587.)

AMENDMENT

1970—Section 166(f) of Act July 29, 1970, Public Law 91–358 amended section by striking out "court of appeals of the District of Columbia" and inserting in lieu thereof "District of Columbia Court of Appeals".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1336.

§ 7–215. Deposit of award in registry—Transfer of title.

In case any of the owners of land condemned are under disability or can not be found, or neglect or refuse to receive the money awarded to them; or in case the title to the property is in dispute or uncertain, the money due the owners of the property for damages for land taken may be deposited in the registry of the Superior Court of the District of Columbia, for the use of the rightful owners without cost or expense to said District; and thereupon the title to the land condemned shall become vested in the District of Columbia. (Mar. 3, 1901, ch. 854, § 491n, as added Apr. 30, 1906, 34 Stat. 154, ch. 2070, and amended Dec. 18, 1908, 35 Stat. 582, ch. 4; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(1)(B), 84 Stat. 570.)

AMENDMENT

1970—Section 155(c)(1)(B) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7–405, 16–1336.

§ 7–216. Condemnation for streets through unsubdivided part of plot.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–219. If damages and costs exceed benefits, Commissioners may dismiss cause.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–221. Benefits assessed against land no part of which was taken—Notice of assessment, how given.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 3.—ALLEYS AND MINOR STREETS

§ 7–301. Alleys and minor streets opened, extended, widened, or straightened by Commissioners—Conditions—Petition of landowners—Minor street defined.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1336.

§ 7–302. Useless alleys—Sale of original alleys—Reversion of title to owner.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(160) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to closing alleys or parts of alleys, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1336.

§ 7–303. Alleys may be closed on dedication of new ones—Application of property owners—Future ownership of closed alleys—Plats recorded.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(161) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to the closing of alleys and accepting the dedication of alleys, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1336.

NOTES TO DECISIONS

District's discretion

District of Columbia Code provision for closing of alleys on dedication of new ones gives District discretionary authority when application is made. *District of Columbia* v. *All of lot 7, In Reservation II etc.* (1968, 284 F. Supp. 692.)

District of Columbia Code provision for closing of alleys on dedication of new ones does not contemplate total extinction of alleys to be replaced, in effect, by parcel of open land. *Id.*

Evidence

Defendants in proceeding by District of Columbia to condemn land were not entitled to introduce evidence of increased value of land should alleys be closed in return for dedication of portion of land, where there was no reasonable possibility that District would exercise its discretion to close alleys. *District of Columbia* v. *All of lot 7, In Reservation II etc.* (1968, 284 F. Supp. 692).

§ 7–304. Closing narrow alleys—Application of property owners—Disposal of land.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(162) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1336.

§ 7–305. Alleys closed for single improvement on two-thirds of square.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(163) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1336.

NOTES TO DECISIONS

Evidence of other settlements

Although condemnor cannot introduce evidence of purchases it has made in settlement of other condemnation suits, condemnee may do so in this particular case. *D. S. Nash et ano.* v. *D.C. Redevelopment Land Agency* (1967, 395 F. 2d 571, 129 U.S. App. D.C. 348).

In proceeding relating to condemnation of parking lot, trial court properly admitted evidence of condemnation settlement relating to neighboring junk yard, notwithstanding fact that agreement between condemnor and junk yard owner had not yet finally been accepted by Justice Department, in view of fact that, in normal course of events, recommendations of condemnor's counsel would be accepted. *Id.*

§ 7–306. Changing of alleyways—Petition of property owners—New dedication—Plat—Future ownership.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(164) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to orders declaring existing alleyways closed and opening new substitute alleyways, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 7–307. Copy of order and plat recorded—Ownership of closed alley.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–308. Obliterating subdivisions and alleys—Filing copy of order.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(165) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to orders canceling existing subdivisions of any square and obliterating alleys therein, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 7–309. Closing alleys—Authorized upon acquisition of abutting property by District of Columbia—Property owner's right of access preserved.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(166) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other

functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 7–310. Land owned by District may be set aside for alley purposes.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(167) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 7–311. Public notice—Hearings.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–312. Maps—Preparation—Recordation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–313. Condemnation to open, widen, or straighten alleys or minor streets—Plats.

Whenever it becomes necessary to open, widen, extend, or straighten alleys or minor streets by condemnation the said commissioners shall institute condemnation proceedings in the Superior Court of the District of Columbia, by a petition in rem particularly describing the land to be taken, which petition shall be accompanied by duplicate plats to be prepared by the surveyor of said District, showing the courses and boundaries of the alley or minor street proposed to be opened, widened, extended, or straightened, the number of square feet to be taken from each lot or part of lot in the square or block, showing the existing alleys or minor street in said square or block, and such other information as may be necessary for the purposes of such condemnation. Upon the filing of such petition, one copy of the plat, indorsed with the docket number of the case, shall be returned by the clerk of said court to the said surveyor for record in his office. (Mar. 3, 1901, ch. 854, § 1608e, as added Feb. 23, 1905, 33 Stat. 734, ch. 734, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(1)(C), 84 Stat. 570.)

AMENDMENT

1970—Section 155(c)(1)(C) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1336.

§§ 7–314 to 7–316.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 16–1336.

§ 7–317. Objections to verdict—When filed—Vacation or modification by court—New jury—Costs.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1336.

§ 7–318. Benefits assessed must equal damages and costs.

Said jury shall assess as benefits accruing by reason of said opening, extension, widening, or straightening an amount equal to the amount of damages as ascertained by them as hereinbefore provided, including five dollars per day for the marshal, and all other expenses of such proceedings. (Mar. 3, 1901, ch. 854, § 1608j, as added Feb. 23, 1905, 33 Stat. 736, ch. 734; Mar. 27, 1968, Pub. L. 90–274, § 103(c), 82 Stat. 63.)

AMENDMENT

1968—Section 103(c), act Mar. 27, 1968, Pub. L. 90–274, amended section by striking out, "and five dollars per day for each juror for the services of each when actually employed".

EFFECTIVE DATE OF AMENDMENT AND APPLICABILITY IN CERTAIN CASES

Section 104, act Mar. 27, 1968, Pub. L. 90–274, provided that: "This Act [Repealing, §§ 7–213a, 13–701, 11–2301 through 11–2305 (except the last par. of 11–2302) 11–2307 through 11–2312, amending §§ 7–318, 11–2306, 16–1312, 16–1357 and 22–1414] shall become effective two hundred and seventy days after the date of enactment: *Provided,* That this Act shall not apply in any case in which an indictment has been returned or petit jury empaneled prior to such effective date."

SHORT TITLE

The enacting clause of act Mar. 27, 1968, Pub. L. 90–274, provides: "That this Act [Amending chapter 121 of title 28, U.S. Code and certain other sections of title 28, U.S. Code; Repealing sections 7–213a, 13–701, 11–2301 through 11–2305 (except the last par. of 11–2302) and 11–2307 to 11–2312 inclusive, and amending sections 7–318, 16–1312, 16–1357, 22–1414 and 11–2306] may be cited as the 'Jury Selection and Service Act of 1968' ".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1336.

§§ 7–320 to 7–322.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 16–1336.

§ 7–323. Appeal from assessment of benefits or damages not to stay proceedings—Determination on appeal controls.

No appeal by any interested party from the decision of the Superior Court of the District of Columbia confirming the assessment or assessments of benefits or damages herein provided for, nor any other proceeding at law or in equity by such party against the confirmation of such assessment or assessments, shall delay or prevent the payment of award to others in respect to the property condemned, nor delay or prevent the taking of any of said property sought to be condemned, nor the opening, extension, widening, or straightening of such alley or minor street: *Provided, however,* That upon the final determination of said appeal or

other proceeding at law or in equity, the amount found to be due and payable as damages sustained by reason of the opening, extension, widening, or straightening of said alley or minor street under the provisions hereof shall be paid as hereinbefore provided. (Mar. 3, 1901, 31 Stat. 1430, ch. 854, § 1610; Feb. 23, 1905, 33 Stat. 736, ch. 734; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(1)(D), 84 Stat. 570.)

AMENDMENT

1970—Section 155(c)(1)(D) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 7–324. Benefit assessments from condemnation for alleys or minor streets.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–325. Proceeds of sale of lands paid into Treasury.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–326. Plats to be made by surveyor—Costs.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–327. Correcting defects in certain prior proceedings.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–330. Surplus from sale of land in which United States is interested to be paid into Treasury.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–331. Costs paid from alley appropriations when proceedings fail.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–333. Commissioners to employ assistant corporation counsel for condemnation proceedings.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 4.—CLOSING STREETS, ALLEYS, OR HIGHWAYS

§ 7–401. Street Readjustment—Closing of unnecessary public ways authorized—Disposition of property—Reference to Planning Commission.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(168) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to the closing of streets, highways, roads, alleys or any part of any thereof, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

NOTES TO DECISIONS

Construction

In this case the court held that the intention of Congress in enacting this chapter (§ 7–401 et seq.), providing for closing of unnecessary streets and alleys in the District of Columbia, was that compensation should be exacted from the property owners to whom the public space was reverting only when there is a possibility that other neighboring property would be adversely affected by the closing. *O. T. Carr, Jr., et al.* v. *District of Columbia, et al.* (1970, 312 F. Supp. 283).

Evidence of other settlements

Although condemnor cannot introduce evidence of purchases it has made in settlement of other condemnation suits, condemnee may do so in this particular case. *D. S. Nash et ano.* v. *D.C. Redevelopment Land Agency* (1967, 395 F. 2d 571, 129 U.S. App. D.C. 348).

In proceeding relating to condemnation of parking lot, trial court properly admitted evidence of condemnation settlement relating to neighboring junk yard, notwithstanding fact that agreement between condemnor and junk yard owner had not yet finally been accepted by Justice Department, in view of fact that, in normal course of events, recommendations of condemnor's counsel would be accepted. *Id.*

§ 7–402. Notice of intention to close public way—Hearing.

NOTES TO DECISIONS

Construction

In this case the court held that the intention of Congress in enacting this chapter (§ 7–401 et seq.); providing for closing of unnecessary streets and alleys in the District of Columbia, was that compensation should be exacted from the property owners to whom the public space was reverting only when there is a possibility that other neighboring property would be adversely affected by the closing. *O. T. Carr, Jr., et al.* v. *District of Columbia, et al.* (1970, 312 F. Supp. 283).

§ 7–404. Order for closing public ways—Notice—Effective if no objection within 30 days—Recordation of plats.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7–405.

§ 7–405. Objections to closing public ways—Proceedings.

When any such objection shall be filed with the commissioners as provided in section 7–404, then the commissioners of the District of Columbia shall institute a proceeding in rem in the Superior Court of the District of Columbia for the closing of such street, road, highway, or alley, or part thereof, and its abandonment for street, highway, or alley purposes, and for the ascertainment of damages and the assessment of benefits resulting from such closing and abandonment. Such proceeding shall be conducted in like manner as proceedings for the condemnation of land for streets, under the provisions of sections 7–202 to 7–212, 7–214 and 7–215, and such closing and abandonment shall be effective when the damages and benefits shall have been so ascertained and the verdict confirmed. (Dec. 15, 1932, 47 Stat.

749, ch. 4, § 5; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(22), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(22) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–407. Abandonment of proceedings.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–408. Petition by property owners for closing.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 5.—BRIDGES, VIADUCTS, AND SUBWAYS

§ 7–501. Control of bridges vested in Commissioners of the District of Columbia—Except Aqueduct Bridge.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(169) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 7–502. Construction and repair of bridges over railway and canal rights-of-way—Collection of cost.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–505. Anacostia Bridge—Cost of paving—Repairs.

The Anacostia and Potomac River Railroad Company shall pay the entire cost of the pavement between the exterior rails of its tracks on said bridge (the Anacostia Bridge) and for a distance of two feet from the said exterior rails of said tracks on each side thereof and the cost of the entire floor system supporting said pavement, to be collected in the same manner as the cost of laying pavements between the rails and tracks of street railways as provided for in section 7–604 and paid for each fiscal year into the treasury of the United States to the credit of the United States and the District of Columbia in the same proportions as appropriations for the expenses of the government of the District of Columbia for such fiscal year are paid from the treasury of the United States and the revenues of the District of Columbia: *Provided further,* That any other railroad company on or after April 27, 1904, authorized by Congress to use said bridge shall have the right to use the tracks of the Anacostia and Potomac River Railroad Company thereon upon such reciprocal trackage and such compensation as may be mutually agreed upon, and in case of failure to reach such an agreement that the Superior Court of the District of Columbia shall, upon petition filed by either party, fix and determine the same. And after April 27, 1904, one-half of the cost of the maintenance and repairs of this bridge shall be borne by the said railway company or companies, and shall be collected in the same manner as the cost of laying pavements between the rails and tracks of street railways, and paid into the treasury, as provided for above. The entire cost of maintenance of such underfloor construction as may be necessary in order that the cars of said company may be propelled over said bridge by underfloor electrical conductors or cables shall, after March 3, 1905, be borne by said railroad company, and no cars shall be propelled across said bridge unless all electrical conductors or cables furnishing power for the propulsion of the same shall be placed under floor of said bridge. (Apr. 27, 1904, 33 Stat. 372, ch. 1628; Mar. 3, 1905, 33 Stat. 893, ch. 1406; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(23), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(23) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 7–507. Highway Bridge—Maintenance cost—Street railways.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–511. Francis Scott Key Bridge—Railways—Approval by Secretary of the Army.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–514. Benning Bridge—Cost—Railways.

One-fifth of the cost of constructing the said bridge (in line of Benning Road over the Anacostia River) and approaches shall be borne and paid by the Washington Railway and Electric Company, its successors and assigns, to the collector of taxes of the District of Columbia, to the credit of the District of Columbia, and the same shall be a valid and subsisting lien against the franchises and property of the said railway company and shall constitute a legal indebtedness of said company in favor of the District of Columbia, and the said lien may be enforced in the name of the District of Columbia by a bill in equity brought by the said commissioners in the Superior Court of the District of Columbia, or by any other lawful proceeding against the said railway company: *Provided further,* That after the completion of said bridge and approaches authorized by the Act of June 29, 1932 (47 Stat. 355) no street railway company shall use said bridge or approaches

until the said company shall have paid to the collector of taxes of the District of Columbia a sum equal to one-fifth of the cost of said bridge and approaches, which sum shall be paid to the collector of taxes of the District of Columbia for deposit to the credit of the District of Columbia. (June 29, 1932, 47 Stat. 355, ch. 308; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(24), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(24) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–520. Michigan Avenue Viaduct—Construction authorized—Cost.

The Commissioners of the District of Columbia are authorized and directed to construct a viaduct and approaches to eliminate the crossing at grade of Michigan Avenue and the tracks and right of way of the Baltimore and Ohio Railroad Company, said viaduct to be constructed north of the present line of Michigan Avenue as may be determined by the commissioners of the District of Columbia in accordance with plans and profiles of said works to be approved by the said commissioners: *Provided,* That one-half of the total cost of constructing the said viaduct and approaches shall be borne and paid by the said railroad company, its successors and assigns, to the collector of taxes of the District of Columbia to the credit of the District of Columbia, and the same shall be a valid and subsisting lien against the franchises and property of the said railroad company and shall constitute a legal indebtedness of said company in favor of the District of Columbia, and the said lien may be enforced in the name of the District of Columbia by a bill in equity brought by the said commissioners in the Superior Court of the District of Columbia, or by any other lawful proceeding against the said railroad company: *Provided further,* That from and after the completion of the said viaduct and approaches the highway grade crossing over the tracks and right-of-way of the said Baltimore and Ohio Railroad Company in line of present Michigan Avenue shall be forever closed against further traffic of any kind. (Mar. 3, 1927, 44 Stat. 1351, ch. 305, § 1; Feb. 12, 1931, 46 Stat. 1087, ch. 119; June 14, 1935, 49 Stat. 349, ch. 241, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(25), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(25) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–523. Subway under Baltimore and Ohio tracks in vicinity of Chestnut Street, Fern Place, and Piney Branch Road, extended—Cost.

One-half of the total cost of constructing a subway under the tracks and right of way of the Baltimore and Ohio Railroad Company in the vicinity of Chestnut Street or of the intersection of Fern Place and Piney Branch Road, extended, and thereafter the cost of maintaining the structure within the limits of its right of way shall be borne and paid by the said Baltimore and Ohio Railroad Company, its successors and assigns, to the collector of taxes of the District of Columbia for deposit to the credit of the District of Columbia, and the same shall be a valid and subsisting lien against the franchises and property of the said railroad company, and shall constitute a legal indebtedness against the said railroad company in favor of the District of Columbia, and said lien may be enforced in the name of the District of Columbia by a bill in equity brought by the commissioners in the Superior Court of the District of Columbia, or by any other legal proceeding against the said railroad company: *Provided further,* That from and after the completion of the said subway and approaches, the highway grade crossing over the tracks and right of way of the said Baltimore and Ohio Railroad Company at Chestnut Street shall be forever closed against further traffic of any kind. (July 3, 1930, 46 Stat. 963, ch. 848; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(26), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(26) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–524. Calvert Street Bridge—Street railways.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–526. Washington Channel bridge and facilities—Construction, maintenance, etc.—Acquisition of land—Cooperation with agencies—Leases—Advisory Committee—Appropriations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 6.—REPAIR AND CONSTRUCTION

§ 7–601. Repairs to streets, avenues, alleys, or sewers—Public notice—Lowest responsible bidder to be accepted—Rejection of bids—Subdivision of contracts.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–602. Contracts—Unanimous consent of Commissioners required—Contracts to be copied into book.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–603. Pavement to be of best known materials—Bond of contractors—Liability for repairs.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–604. Payments—Railway companies to pay portion of cost—Penalty for refusal.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–604a. Removal of street railway tracks—Provision for paving.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(170) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 7–605. Water and gas mains, service pipes, and sewer connections to be laid before permanent improvements are made.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–607. Commissioners to submit schedules of streets to be improved in order of importance.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–608. Improvement and repair of alleys and sidewalks, and construction of sewers and sidewalks under permit system—Hearing—Notice—Cost—Assessment, collection, liability for sale, deposit.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–610. Service connections for water and sewer when street is about to be paved—Cost—Assessment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–612. Assessments for costs of paving streets.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–613. Width of pavement of streets.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–615. Cutting trenches in highways—Reservation or public space without permit prohibited—Inapplicable to public buildings.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7–616.

§ 7–616. Penalty—Prosecution.

Any person violating any of the provisions of sections 7–615 and 7–616 shall, on conviction thereof in the Superior Court of the District of Columbia be punished by a fine of not less than five dollars nor more than one hundred dollars; and in default of payment of such fine such person shall be confined in the workhouse of the District of Columbia for a period not exceeding six months; and all prosecutions shall be in the Superior Court of the District of Columbia, in the name of the District of Columbia. (June 18, 1898, 30 Stat. 477, ch. 467, § 8; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 7–618. Use of portable asphalt plant.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–620. Limitation on contracts of District Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§§ 7–622 to 7–629.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 47–1102.

§ 7–630. Collection of assessments—Interest—Advertising of intention to improve and hearing not required.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1102.

§ 7–631. Protest of aggrieved property owner—Adjustment of assessment by Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1102.

§ 7–632. Cancellation of prior assessments directed—Reassessment—Refund.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1102.

§§ 7–633, 7–634.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 47–1102.

Chapter 7.—STREET LIGHTING

§ 7–701. Street lighting—Rates for street lighting—Cost and maintenance of lighting facilities—Powers of Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–703. Deductions for failure to provide required illumination—Testing facilities.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–704. Contracts for gas and electric lighting not required.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–705. Penalty for failure to furnish, erect, maintain, move, or discontinue street lamps.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–706. Extension of gas-mains for maintenance of street lamps—Cost.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(171) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 7–707. Regulating hours of lighting of street lamps.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–708. Washington Terminal Company to pay for certain street lighting.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–709. Railroads to pay for certain street lighting.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 8.—REMOVAL OF SNOW AND ICE

§ 7–802. Removal by Commissioners from walks adjacent to public buildings—Making safe with sand or ashes.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Care of streets and sidewalks

In denying a motion by the defendant, District of Columbia, for Judgment notwithstanding the Verdict or in the alternative for a New Trial, the court held that the District of Columbia has primary responsibility for maintaining streets and sidewalks in reasonably safe condition, regardless of who owns the fee in such streets and sidewalks, in absence of special circumstances such as accumulation of snow or ice or improvement of the way in question by the United States. *J. M. Conner et al.* v. *United States et al.* (1970, 309 F. Supp. 446).

§ 7–803. Removal from sidewalks adjacent to Federal buildings—Making safe with sand or ashes.

NOTES TO DECISIONS

Care of streets and sidewalks

In denying a motion by the defendant, District of Columbia, for Judgment notwithstanding the Verdict or in the alternative for a New Trial, the court held that the District of Columbia has primary responsibility for maintaining streets and sidewalks in reasonably safe condition, regardless of who owns the fee in such streets and sidewalks, in absence of special circumstances such as accumulation of snow or ice or improvement of the way in question by the United States. *J. M. Conner et al.* v. *United States et al.* (1970, 309 F. Supp. 446).

§ 7–805. Removal by Commissioners upon default by owner or occupant—Expense.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 9.—RENTAL AND UTILIZATION OF PUBLIC SPACE

SUBCHAPTER I.—RENTAL OF PUBLIC SPACE

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Sec.
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SUBCHAPTER II.—RENTAL OF AIRSPACE

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7-950. Regulations by District Council, authorized—Penalties for violating regulations—Notice of violation—Suit to enjoin continuing violation.
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7-952. Actions by Federal and District Governments to recover use of leased airspace—Compensation to be paid on recovery of leased airspace.
7-953. Area exempted from provisions of this subchapter.

SUBCHAPTER I.—RENTAL OF PUBLIC SPACE

TITLE I.—SHORT TITLE, STATEMENT OF FINDINGS, AND POLICY DEFINITIONS

§ 7-901. Repealed. Oct. 17, 1968, Pub. L. 90-596, § 301, title III, 82 Stat. 1158.

Section, act Sept. 1, 1916, 39 Stat. 716, ch. 433, § 7, as amended May 18, 1954, 68 Stat. 110, ch. 218, § 501, authorized the Commissioners to assess and collect rents from users of space occupied under the sidewalks and streets. Subject matter is now covered by Pub. L. 90-596, set out in this subchapter. Section 301, the repealing section also provided that all permits issued under the authority of this section "are revoked" as of the effective date of this title. [Title III] See sec. 7-925.

EFFECTIVE DATE

See section 7-925.

§ 7-902. Definitions.

As used in this subchapter, unless the context requires otherwise—

"Commissioner" means the Commissioner of the District or his designated agent.

"District" means the District of Columbia.

"Owner" means (1) any person, or any one of a number of persons, in whom is vested all or any part of the beneficial ownership, dominion, or title of property; (2) the committee, conservator, or legal guardian of an owner who is non compos mentis, a minor child, or otherwise under a disability; or (3) a trustee elected or appointed, or required by law, to execute a trust, other than a trustee under a deed of trust to secure the repayment of a loan.

"Parking" means that area of public space which lies between the property line and the edge of the actual or planned sidewalk which is nearer to such property line, as such property line and sidewalk are shown on the records of the District.

"Property line" means the line of demarcation between privately owned property fronting or abutting a street and the publicly owned property in the line of such street.

"Public space" means all the publicly owned property between the property lines on a street, as such property lines are shown on the records of the District, and includes any roadway, tree space, sidewalk, or parking between such property lines.

"Street" means a public highway as shown on the records of the District, whether designated as a street, alley, avenue, freeway, road, drive, lane, place, boulevard, parkway, circle, or by some other term.

"Vault" means a structure or an enclosure of space beneath the surface of the public space, including but not limited to tanks for petroleum products, except that the term "vault" shall not include public utility structures, pipelines, or tunnels constructed under the authority of subsection (d) of section 1-244, or structures or facilities of the United States or the District of Columbia, or of any governmental entity or foreign government, or any structure or facility included in any lease agreement entered into by the Commissioner. If such structure or enclosure of space be divided approximately horizontally into two or more levels, the term "vault" as used in this subchapter shall be considered as applying to one such level only, and each such level shall be con-

sidered a separate vault within the meaning of this subchapter. (Oct. 17, 1968, Pub. L. 90–596, § 103, title I, 82 Stat. 1156.)

CONGRESSIONAL FINDINGS

Section 102, act Oct. 17, 1968, Pub. L. 90–596, provided: "The Congress finds that there is demand in the District for the use of public space for private gain by the owners of property abutting such space, or by the operators of businesses on such property. The Congress further finds that much of the use that is presently being made of such space by such owners or operators, and much of the use that is proposed to be made thereof, would not be in derogation of the rights of the general public to use such space if a determination be made by the Commissioner that some or all of such space is not required for the use of the general public and may be made available for use, for business purposes, by or with the consent of the owners of the private property abutting such public space, subject to the payment of adequate compensation for the use of such public space, and subject to the discontinuance of such use to the extent that the Commissioner may later determine such space to be required for the use of the general public, including use by a public utility company. The Congress therefore declares that public space in the District which the Commissioner finds is not required for the use of the general public may be made available by him, for use, for business purposes, by or with the consent of the owners of private property abutting such space, upon payment to the District of compensation for the use of such space, and on the condition that such use will be discontinued in whole or in part whenever the Commissioner determines that all or part of the public space is required for the use of the general public."

SHORT TITLE

Section 101, act Oct. 17, 1968. Pub. L. 90–596, provided: "This Act (This subchapter and the repeal of section 7–901) may be cited as the 'District of Columbia Public Space Rental Act.' "

EFFECTIVE DATE

See section 7–925.

§ 7–903. Assessment and collection of rent from the United States, District of Columbia or foreign governments, not authorized.

Nothing contained in this subchapter shall be construed as requiring the Commissioner to assess and collect rent from the Government of the United States, the government of the District of Columbia, or any foreign government, for the use, in accordance with the provisions of titles II and III, of public space abutting property owned by any such government or governmental entity, nor shall any such government or governmental entity be subject to the payment of any rent required by this subchapter. (Oct. 17, 1968, Pub. L. 90–596, § 104, title I, 82 Stat. 1157.)

EFFECTIVE DATE

See section 7–925.

§ 7–904. Minor uses of public space without rental payments, authorized.

Notwithstanding any other provisions of this subchapter, the Commissioner is authorized, in his judgment and pursuant to regulations adopted and promulgated by the District of Columbia Council, to permit the occupancy of public space for minor uses without requiring rental payments when the fixing and collection of rental charges would not be feasible. (Oct. 17, 1968, Pub. L. 90–596, § 105, title I, 82 Stat. 1157.)

EFFECTIVE DATE

See section 7–925.

TITLE II.—RENTAL OF PUBLIC SPACE ON OR ABOVE THE SURFACE

§ 7–905. Regulations by District Council for rental of public space—Conditions—Provisions to be included in regulations.

The District of Columbia Council is authorized to provide by regulation for the rental of portions of public space on or above the surface of the pavement or the ground, as the case may be, and not actually required for the use of the general public, for such period of time as the said space may not be so required or for any lesser period: *Provided,* That nothing herein contained shall be construed as requiring the Council to require the payment of rent as a condition to the use of public space (1) in accordance with the provisions of regulations promulgated under the authority of the first paragraph of section 5–204; (2) by a public utility company for the installation and maintenance of any of its equipment or facilities, under permit issued by the District; or (3) for the sale of newspapers of general circulation: *Provided further,* That the proposed rental of public space within the area of the District of Columbia subject to the provisions of sections 5–410 and 5–411, shall be submitted to the Commission of Fine Arts in accordance with the provisions of sections 5–410 and 5–411. The regulations adopted by the District of Columbia Council shall provide that public space rented under the authority of this title shall be rented only to the owner of property fronting and abutting such public space; that any person using such space shall not acquire any right, title, or interest therein; that both the United States and the District of Columbia, and the officers and employees of each of them, shall be held harmless for any loss or damage arising out of the use of such space, or the discontinuance of any such use; that the Commissioner may require such space to be vacated upon demand by him and its use discontinued, with or without notice, and with no recourse against either the United States or the District for any loss or damage occasioned by any such requirement; and that if any such use be not discontinued by the time specified by the Commissioner, the said Commissioner may remove from such space any property left thereon or therein by any person using such space under the authority of this title, at the risk and expense of the owner of the real property abutting such space. (Oct. 17, 1968, Pub. L. 90–596, § 201, title II, 82 Stat. 1157.)

EFFECTIVE DATE

See section 7–925.

§ 7–906. Regulations to prescribe rental to be paid—Minimum rental to be paid under this title—Refunds.

The District of Columbia Council shall by regulation provide for the payment of rent for the use of public space as authorized by this title. The annual rent for such space shall be a fair and equitable amount fixed by the Council from time to time in accordance with regulations adopted by it, generally establishing categories of use and providing that the rent for each category of use shall bear a reasonable relationship to the assessed value of the privately owned land abutting such space, depending on the

nature of the category of use and the extent to which the public space may be utilized for such purpose, but in no event shall the annual rent for the public space so utilized be at a rate of less than 4 per centum per annum of the current assessed value of an equivalent area of the privately owned space immediately abutting the public space so utilized. Such rent shall be payable in advance for such periods as may be fixed by the Council. In the event the Commissioner requires any person using public space under the authority of this title to vacate all or part of any space for which rent has been paid, the Commissioner is authorized to refund so much of such prepaid rent as may be represented by the amount of space so vacated and by the length of time remaining in the period for which rent was paid. (Oct. 17, 1968, Pub. L. 90–596, § 202, title II, 82 Stat. 1158).

EFFECTIVE DATE

See section 7–925.

§ 7–907. Use of property subject to the requirements of section 7–117.

The Commissioner is authorized, with respect to property subject to the requirements of section 7–117, to allow the same use to be made of such property as, under the authority of this title, he allows to be made of the public space abutting such property. Any such use of such property shall be subject to the same conditions as are applicable to the use of the abutting public space, with the exception of the payment of rent. (Oct. 17, 1968, Pub. L. 90–596, § 203, title II, 82 Stat. 1158.)

EFFECTIVE DATE

See section 7–925.

TITLE III.—RENTAL OF SUBSURFACE PUBLIC SPACE

§ 7–908. Permits for use or construction of vaults—Agreement required of owner—Contents of agreement—Recordation of a copy of agreement in office of Recorder of Deeds.

The Commissioner is authorized to issue a permit for the use of a vault constructed prior to the effective date of this subchapter, or for the construction of a vault after such effective date, only to the owner of the real property abutting the public space in which such vault is or will be located. The issuance of each such permit shall be conditioned on the prior execution by such owner of an agreement acknowledging, for himself, his heirs and assigns, (1) that no right, title, or interest of the public is thereby acquired, waived, or abridged; (2) that the Commissioner may inspect such vault during regular business hours; (3) that the Commissioner may introduce or authorize the introduction into or through such vault with, right of entry for inspection, maintenance, and repair, of any water pipe, gas pipe, sewer, conduit, other pipe, or other public or public utility underground construction, which the Commissioner deems necessary in the public interest to place in or through such vault; (4) that such vault will be changed by the owner, or by the District at the expense of such owner, to conform with any change made in the street, roadway, or sidewalk width or grade; and (5) that rental for such vault will be paid to the District as required by this subchapter. A copy of such agreement shall be recorded in the office of the Recorder of Deeds by and at the expense of such owner. (Oct. 17, 1968, Pub. L. 90–596, § 302, title III, 82 Stat. 1158.)

EFFECTIVE DATE

See sections 7–917 and 7–925.

§ 7–909. Commissioner to assess and collect rents for use of vaults.

The Commissioner is authorized and directed to assess and collect rent from the owners of abutting property for any vault located in the public space abutting such property, unless such vault shall have been removed, filled, sealed, or otherwise rendered unusable in a manner satisfactory to the Commissioner. (Oct. 17, 1968, Pub. L. 90–596; § 303, title III, 82 Stat. 1159.)

EFFECTIVE DATE

See sections 7–917 and 7–925.

§ 7–910. Owners of property in which vaults are located to pay rents as fixed by District Council—Minimum rent—Waiver of rent under certain conditions.

Each owner of property abutting public space in which a vault is located shall pay an annual rent fixed from time to time by the District of Columbia Council for such vault, but such annual rent shall not be less than $10, and such rent shall be subject to collection from said owner in the manner prescribed by this title, regardless of whether any use is made of such vault, and regardless of the extent of any use: *Provided,* That no rent for any rental year for a vault shall be charged to the owner of abutting property if said owner, prior to July 1 of such year, has notified the Commissioner in writing that he has abandoned such vault and has performed such work as may be required by the District in connection with the sealing off or filling of such vault, or both. (Oct. 17, 1968, Pub. L. 90–596, § 304, title III, 82 Stat. 1159.)

EFFECTIVE DATE

See sections 7–917 and 7–925.

§ 7–911. Same; Annual payment of rent—Rental year—Interest charges for non-payment—Refunds—Deduction of expenses.

(a) The owner of property abutting public space in which any vault is located, as such owner may be recorded in the real estate assessment records of the District, shall pay the rent established in accordance with this title for such vault. Such rent shall be payable annually for the year commencing July 1 and ending the following June 30, and shall be payable in full prior to the beginning of such year. In the case of vaults constructed between July 1 and January 1 of any year, one-half of the annual rent for any such vault, shall be payable in full prior to the first of January immediately following the completion of such vault. In the case of vaults constructed between January 1 and July 1 of the succeeding year, no rent shall be charged for any vault completed within such period, but the owner of the property abutting the public space in which such vault is located shall, prior to the first of July immediately following the completion of any such vault, pay in full the annual rent for such vault, for the rental year commencing on such July 1. Interest at

the rate of 1 per centum for each month or part thereof shall be charged in every case in which rent is not paid on or before the date on which any payment required by this section shall become due.

(b) In the event the Commissioner requires or allows any person using subsurface public space under the authority of this title to vacate, voluntarily or involuntarily, all or part of any space for which rent has been paid, the Commissioner is authorized to refund so much of such prepaid rent as may be represented by the amount of space so vacated and by the length of time remaining in the period for which rent was paid: *Provided,* That the Commissioner may deduct from such prepayment any amount due the District in compensation for expenses to the District in connection with the use or abandonment of said space. (Oct. 17, 1968, Pub. L. 90–596, § 305, title III, 82 Stat. 1159.)

EFFECTIVE DATE

See sections 7–917 and 7–925.

§ 7–912. Commissioner authorized to order removal from vault under certain conditions—Failure to comply with order, a violation of this subchapter—Application to Superior Court for authority to enter upon property of owner—Liability of District and employees for damages—Service of process on owner.

(a) Whenever the Commissioner determines that any vault is unsafe or is not in use, or the space occupied by such vault is required for street improvements, or the construction or extension of sewers, water mains, other public works, or public utility facilities, the Commissioner is authorized to serve upon the owner of property abutting public space occupied by such vault an order requiring such owner to remove in whole or in part, reconstruct, repair, or close such vault by filling, sealing, or otherwise rendering unusable in a manner satisfactory to the Commissioner. The failure or refusal of any such owner to comply with such order of the Commissioner within the time specified in such order shall constitute a violation of this subchapter.

(b) In the event that any owner of property abutting an unused or unsafe vault fails to remove in whole or in part, reconstruct, repair, of close the same by filling, sealing, or otherwise rendering unusable in a manner satisfactory to the Commissioner within the time specified by him, the Commissioner is authorized to apply to the Superior Court of the District of Columbia for, and the said court is hereby authorized to issue, an order empowering the Commissioner to enter upon the property of such owner for the purpose of performing such work as may be necessary in connection with the removal, reconstruction, repair, or closure of such vault, and the District and its officers and employees shall not be liable for any damage to real or personal property which may result from the performance of any such work, other than such damage as may be caused by the gross negligence of the District or of any of its officers or employees. Process in connection with the application for such order shall be served on the owner in accordance with the rules of said court relating to the service of process in civil actions. In the event such owner is not to be found in the District after reasonable search and an affidavit to this effect is made on behalf of the District, such process may be served by publications for one day each week for three consecutive weeks in a newspaper of general circulation in the District, and, if service of process is by publication, a copy of such process and publication shall be sent to such owner by certified mail at his last known address as recorded in the real estate assessment records of the District. (Oct. 17, 1968, Pub. L. 90–596, § 306, title III, 82 Stat. 1160; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (b) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATE

See sections 7–917 and 7–925.

§ 7–913. Same; Notice to owner when vaults are dangerous—Commissioner's authority to make vaults safe and secure—District's expenses to be charged against private property of owner.

Notwithstanding the provisions of the preceding section, whenever the Commissioner finds that any vault or vault opening in such condition as to be imminently dangerous to persons or property, he shall immediately notify the owner, agent, or other person in charge of the private property abutting the public space in which such vault or vault opening is located, to cause such vault or vault opening to be made safe and secure. The person or persons so notified shall be allowed until 12 o'clock noon of the day following the service of such notice in which to commence making such vault or vault opening safe and secure: *Provided,* That in a case where the public safety requires immediate action the Commissioner may enter upon the private property abutting the public space in which such vault or vault opening is located, with such workmen and assistants as may be necessary, and cause such vault or vault opening to be made safe and secure. In any case in which the Commissioner performs any work under the authority of this section, the cost to the District of performing such work shall be charged against the private property abutting the public space in which such vault or vault opening is located, and shall be collected in the manner provided by section 7–914. (Oct. 17, 1968, Pub. L. 90–596, § 307, title III, 82 Stat. 1160.)

EFFECTIVE DATE

See sections 7–917 and 7–925.

§ 7–914. Authority to secure the payment of rents, interest and other charges—Delinquent charges to be levied as a tax—Payment of tax—Tax sale for delinquent taxes.

(a) The Commissioner shall take such action as he in his discretion considers necessary or desirable to secure the payment to the District of rents due and payable on vaults; interest on late rental payments; the cost of any advertising required by this title; the cost to the District of sealing off, removing in whole or in part, filling, reconstructing, repairing, or closing a vault or vault opening, or performing any other service in connection therewith; and interest at the rate of 1 per centum per month or part

thereof in every case in which payment to the District for the cost of performing work authorized by this title is not made within thirty days after a bill for such cost shall have been rendered.

(b) Charges authorized to be made by this title and not paid within ninety days after the close of the fiscal year in which such charges accrue shall be levied by the Commissioner as a tax against the property abutting the public space in which a vault is located, such tax to be collected as provided in this section. Such tax shall include, without limitation, rents due and payable on vaults, interest on late rental payments, costs for sealing off, removing in whole or in part, filling, repairing, reconstructing, or closing a vault or vault opening, interest on late payments of such costs, and any advertising required by this title. The tax authorized to be levied and collected under this section may be paid without interest within sixty days from the date such tax was levied. Interest of one-half of 1 per centum for each month or part thereof shall be charged on all unpaid amounts from the expiration of sixty days from the date such tax was levied. Any such tax may be paid in three equal installments with interest thereon. If any such tax or part thereof shall remain unpaid after the expiration of two years from the date such tax was levied, the property against which said tax was levied may be sold for such tax or unpaid portion thereof with interest and penalties thereon at the next ensuing annual tax sale in the same manner and under the same conditions as property sold for delinquent general real estate taxes, if said tax with interest and penalties thereon shall not have been paid in full prior to said sale. (Oct. 17, 1968, Pub. L. 90–596, § 308, title III, 82 Stat. 1160.)

EFFECTIVE DATE

See sections 7–917 and 7–925.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7–913 and 7–915.

§ 7–915. Vaults to be made available for utility construction or installation—Applicants to grant District certain rights—Superior Court authorized to permit Commissioner to enter upon premises—Damages—Service of process—Costs and expenses.

(a) The Commissioner is authorized to require that the use of a vault occupied or used under the authority of this subchapter shall be subject to the condition that the District shall have the right at any time to install or construct under, over, or through said vault any water pipe, gas pipe, sewer, conduit, other pipe, or other public or public utility underground construction that the Commissioner may consider it necessary in the public interest to place in the space occupied by such vault, without compensation to the owner of the private property abutting the space in which such vault is located or to the person occupying or using such vault. Each person using or occupying a vault, upon notice from the Commissioner that a water pipe, gas pipe, sewer, conduit, other pipe, or other public or public utility underground construction is to be introduced in the space occupied by such vault, shall commence to move, and forthwith remove, if necessary, any boiler, pipe, wall, beam, machinery, or construction in or pertaining to said vault, or any fixture or other thing therein, without cost to the District, so as to leave a space clear and sufficient in the judgment of the Commissioner for the introduction and maintenance of any such underground construction or installation. The Commissioner is further authorized to require each applicant for a permit to construct a vault in public space, as a condition precedent to the issuance of the permit, to agree for himself and his heirs and assigns that the Commissioner shall have the right to enter upon the premises at any time for the inspection and proper maintenance or repair of any public underground construction or installation in such vault, and that in case there is any change in the street, roadway, or sidewalk above such vault, the vault shall be subject to a corresponding change, as directed by the Commissioner, without expense to the District of Columbia.

(b) In the event a person occupying or using a vault under the authority of this subchapter shall fail or refuse to perform or to permit the performance of any work required by the Commissioner under the authority of subsection (a), the Commissioner is authorized to apply to the Superior Court of the District of Columbia for, and said court is hereby authorized to issue, an order empowering the Commissioner to enter upon the private property abutting the public space in which such vault is located for the purpose of performing such work as may be necessary in connection with the construction or installation in such public space of any water pipe, gas pipe, sewer, conduit, other pipe, or other underground construction or installation that the Commissioner may consider it necessary or desirable to place in such space, and the District and its officers and employees shall not be liable for any damage to real or personal property which may result from the performance of any such work, other than such damage as may be caused by the gross negligence of the District or of any of its officers or employees. Process in connection with the application for such order shall be served on the owner in accordance with the rules of said court relating to the service of process in civil actions. In the event such owner is not to be found in the District after reasonable search and an affidavit to this effect is made on behalf of the District, such process may be served by publication for one day each week for three consecutive weeks in a newspaper of general circulation in the District, and, if service of process is by publication, a copy of such process and publication shall be sent to such owner by certified mail at his last known address as recorded in the real estate assessment records of the District. The cost to the District of performing such work, including, without limitation, the reasonable cost to the District of securing the court order authorized by this subsection and any advertising in connection therewith, shall be a charge which may be levied by the Commissioner as a tax against the property abutting the public space in which a vault is located, to be collected in the manner authorized by section 7–914. (Oct. 17, 1968, Pub. L. 90–596, § 309, title III, 82 Stat. 1161; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (b) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATE

See sections 7–917 and 7–925.

§ 7–916. District Council not authorized to impose a rental charge for vaults abutting single or two family homes.

Nothing contained in this title shall be construed as authorizing the District of Columbia Council to impose a rental charge for the use of any vault abutting real property on which is located a single or two-family dwelling occupied solely for residential purposes, but any such vault shall otherwise be subject to the provisions of this title. (Oct. 17, 1968, Pub. L. 90–596, § 310, title III, 82 Stat. 1162.)

EFFECTIVE DATE

See sections 7–917 and 7–925.

TITLE IV.—REGULATIONS, INSURANCE, NOTICE, PENALTY, CREDITING OF RENTAL PAYMENTS, AUTHORIZATION OF APPROPRIATIONS, SEPARABILITY PROVISION, COORDINATION WITH SECTION 7–117, AND EFFECTIVE DATES

§ 7–917. District Council authorized to promulgate regulations to carry out the purposes of this subchapter—Effective date of regulations.

The District of Columbia Council after public hearing is authorized to make and promulgate regulations to carry out the purposes of this subchapter. The regulations initially adopted by the Council under the authority of this section to carry out the purposes of title III shall become effective on the effective date of such title, if, not less than ten days prior to such date, the Council has adopted such regulations and printed a notice of such adoption in a newspaper of general circulation in the District. Otherwise, the regulations adopted by the Council under the authority of this section shall become effective ten days after notice of their adoption has been printed in a newspaper of general circulation in the District. (Oct. 17, 1968, Pub. L. 90–596, § 401, title IV, 82 Stat. 1162.)

EFFECTIVE DATE

See section 7–925.

§ 7–918. Insurance requirements—District and its employees to be included in insurance policies—United States and District Governments exempt from insurance requirements.

The Commissioner shall, in connection with authorizing the use of any public space under the authority of this subchapter, require the person authorized to use such space, prior to any such use, to secure a policy of public liability and property damage insurance or other acceptable security providing for such minimum limits of liability as may be required by the Commissioner. Any such insurance policy shall include the District and its officers and employees as additional parties insured and shall be cancellable only after thirty days' written notice of such cancellation has been received by the Commissioner. No such use of public space shall be authorized or continued for any period unless such insurance or other security is maintained in full force and effect during that period. Nothing herein contained shall be construed as requiring either the United States or the District to secure a policy of public liability and property damage insurance or other security covering any use of public space by either of the said governments under the authority of this subchapter. (Oct 17, 1968, Pub. L. 90–596, § 402, title IV, 82 Stat. 1162.)

EFFECTIVE DATE

See section 7–925.

§ 7–919. Manner of service of orders and notices required to be served pursuant to the provisions of this subchapter.

(a) Any order or notice required by this subchapter to be served shall be deemed to have been served when served by any of the following methods: (1) when forwarded by certified mail to the last known address of the owner as recorded in the real estate assessment records of the District, with return receipt, and such receipt shall constitute prima facie evidence of service upon such owner if such receipt is signed either by the owner or by a person of suitable age and discretion located at such address: *Provided,* That valid service upon the owner shall be deemed effected (1) if such order or notice shall be refused by the owner and not delivered for that reason; or (2) when delivered to the person to be notified; or (3) when left at the usual residence or place of business of the person to me notified with a person of suitable age and discretion then resident or employed therein; or (4) if no such residence or place of business can be found in the District by reasonable search, then if left with any person of suitable age and discretion employed at the office of any agent of the person to be notified, which agent has any authority or duty with reference to the land or tenement to which said order or notice relates; or (5) if any such order or notice forwarded by certified mail be returned for reasons other than refusal, or if personal service of any such order or notice, as hereinbefore provided, cannot be effected, then if published for one day each week for three consecutive weeks in a daily newspaper published in the District; or (6) if by reason of an outstanding unrecorded transfer of title the name of the owner in fact cannot be ascertained beyond a reasonable doubt, then if served on the owner of record in a manner hereinbefore provided. Any order or notice to a corporation shall, for the purposes of this subchapter, be deemed to have been served on such corporation if served on the president, secretary, treasurer, general manager, or any principal officer of such corporation in the manner hereinbefore provided for the service of orders or notices on natural persons holding property in their own right; and orders or notices to a foreign corporation shall, for the purposes of this subchapter, be deemed to have been served if served personally on any agent of such corporation, or if left with any person of suitable age and discretion residing at the usual residence or employed at the usual place of business of such agent in the District.

(b) In case such order or notice is served by any method other than personal service, notice shall also be sent to the owner by ordinary mail. (Oct. 17, 1968, Pub. L. 90–596, § 403, title IV, 82 Stat. 1163.)

EFFECTIVE DATE

See section 7–925.

§ 7–920. Penalties for violations—Additional penalties may be prescribed by District Council.

Any person who shall violate any provision of this subchapter shall be punished by a fine not exceeding $300 or by imprisonment for not more than ten days. In addition, such regulations as may be adopted by the District of Columbia under the authority of this subchapter may provide for the imposition of a fine of not more than $300 or imprisonment for not more than ten days for each and every day any public space is used or occupied in a manner or for a purpose specifically prohibited by the said regulations. (Oct. 17, 1968, Pub. L. 90–596, § 404, 82 Stat. 1163.)

EFFECTIVE DATE

See section 7–925.

§ 7–921. Deposit of rents collected.

Rent paid for the use of public space under the authority of this subchapter shall be deposited to the credit of such special funds or general fund of the District in such proportions as the Commissioner shall, in his discretion, determine. (Oct. 17, 1968, Pub. L. 90–596, § 405, title IV, 82 Stat. 1164.)

EFFECTIVE DATE

See section 7–925.

§ 7–922. Appropriations.

Appropriations to carry out the purposes of this subchapter are hereby authorized. (Oct. 17, 1968, Pub. L. 90–596, § 406, title IV, 82 Stat. 1164.)

EFFECTIVE DATE

See section 7–925.

§ 7–923. Separability.

If any provision of this subchapter or of the regulations promulgated under the authority of this subchapter is held invalid, such invalidity shall not affect other provisions either of this subchapter or of the said regulations which can be effected without the invalid provisions, and to this end the provisions of this subchapter and the said regulations are separable. (Oct. 17, 1968, Pub. L. 90–596, § 407, title IV, 82 Stat. 1164.)

EFFECTIVE DATE

See section 7–925.

§ 7–924. Subchapter not to affect provisions of section 7–117.

Nothing contained in this subchapter shall be construed to affect in any manner the provisions of section 7–117, with respect to streets heretofore or hereafter dedicated in accordance with the provisions of such Act, and to make use of the parking on any such street in accordance with the terms of the fourth proviso of such section, relating to the height of parking and the projection of buildings beyond the building line, the District's right-of-way through said parking for sewers and water mains free of cost, and the use of the parking by the District for the construction of sidewalks. (Oct. 17, 1968, Pub. L. 90–596, § 408, title IV, 82 Stat. 1164.)

EFFECTIVE DATE

See section 7–925.

REFERENCE IN TEXT

"Such Act" referred to in this section is the Act of May 31, 1900, 31 Stat. 248, ch. 559. The Act consists of two sections. The first section is not classified. The second section thereof is set out as section 7–117.

§ 7–925. Effective dates.

Titles I and IV of this subchapter shall take effect on the date of approval of this subchapter. Title II shall take effect the first day of the first month which occurs more than thirty days after the District of Columbia Council has first adopted and promulgated regulations to carry out the purposes of such title. Title III shall take effect on the 1st day of July which occurs three months or more after the date of approval of this subchapter. (Oct. 17, 1968, Pub. L. 90–596, § 409, title IV, 82 Stat. 1164.)

SUBCHAPTER II.—RENTAL OF AIRSPACE

§ 7–941. Definitions.

As used in this subchapter—

(1) The term "Commissioner" means the Commissioner of the District of Columbia.

(2) The term "District" means the District of Columbia.

(3) The term "airspace" means the space above and below a street or alley under the jurisdiction of the Commissioner.

(Oct. 17, 1968, Pub. L. 90–598, § 2, 82 Stat. 1166.)

SHORT TITLE

Section 1, act Oct. 17, 1968, Pub. L. 90–598, provided that "This Act [this subchapter] may be cited as the 'District of Columbia Public Space Utilization Act'."

§ 7–942. Commissioner's authority with respect to airspace—Agreements with Federal Government.

The Commissioner, in conformity with the comprehensive plan for the National Capital prepared under section 1–1004, may—

(1) enter into leases for the use of airspace in The District to an extent not inconsistent with the use, operation, and maintenance of, any street or alley;

(2) use airspace for such public purposes as are authorized by law;

(3) enter into agreements with the Federal Government for the purpose of receiving grants or other financial assistance under the Federal programs in connection with the construction, use or operation of any structure in airspace; and

(4) enter into agreements with the Federal Government to enable the Federal Government to construct Federal buildings in the space above and below any street or alley, title to which is in the District.

(Oct. 17, 1968, Pub. L. 90–598, § 3, 82 Stat. 1166.)

§ 7–943. Terms and conditions to be included in airspace leases.

Any lease of airspace entered into under this subchapter shall provide—

(1) that such airspace shall not be used to deprive any real property not owned by the lessee of easements of light, air, and access;

(2) for a clearance of at least fifteen feet between the recorded grade of a street or alley and the lowest portion of any structure (other than supporting columns) constructed over such street or alley;

(3) that upon the expiration or termination of the lease of airspace the Commissioner may require (at the expense of the lessee or his successor in interest) the removal of any structure constructed or erected in such airspace and the restoration of such airspace to its condition prior to the construction or erection of such structure;

(4) that all the rights, duties, terms, conditions, agreements, and covenants set forth and contained in such lease shall run with the abutting real property owned by the lessee and shall apply to the lessee, his heirs, legal representatives, successors, and assignees;

(5) that the lessee shall, at his expense, record a copy of the lease in the Office of the Recorder of Deeds of the District of Columbia;

(6) for the payment of such rents and fees, and the posting of such bond or such other security, by the lessee, as the Commissioner determines to be necessary or desirable; and

(7) for such other terms and conditions as the Commissioner determines to be necessary or desirable.

(Oct. 17, 1968, Pub. L. 90–598, § 4, 82 Stat. 1166.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7–951.

§ 7–944. Commissioner authorized to execute airspace leases under certain conditions.

The Commissioner may execute a lease of airspace under this subchapter if—

(1) the lessee of the airspace has a fee simple title to the real property abutting such airspace and the lease is for airspace which lies only within the frontages of such abutting real property which are directly opposite;

(2) the Zoning Commission of the District of Columbia, after public hearing and after securing the advice and recommendations of the National Capital Planning Commission, has determined the the use to be permitted in such airspace and has established regulations applicable to the use of such airspace consistent with regulations applicable to the abutting privately owned property, including limitations and requirements respecting the height of any structure to be erected in such airspace, offstreet parking and floor area ratios applicable to such structure, and easements of light, air, and access;

(3) the lessee has submitted to the Commissioner, for his review and approval, plans, elevations, sections, a description of the texture, material, and method of construction of the exterior walls, and a scale model, of any structure to be erected in such airspace;

(4) the Commissioner with respect to any structure proposed to be constructed in an area subject to sections 5–410 and 5–411, or sections 5–801 to 5–805 has submitted to the Commission of Fine Arts for its review and recommendations, plans, elevations, sections, a description of the texture, material, and method of construction of the exterior walls, and a scale model, of any such structure; and

(5) the Commissioner, with respect to any structure proposed to be constructed over space utilized or to be utilized for the construction and operation of the subway of the Washington Metropolitan Area Transit Authority, has submitted to the Authority for its review and recommendations the plans, elevations, sections, and a scale model of any such structure.

(Oct. 17, 1968, Pub. L. 90–598, § 5, 82 Stat. 1167.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7–951.

§ 7–945. Cost of removal or relocation of public or private facilities—Commissioner's approval required.

The District shall not pay the cost of any removal or relocation of publicly or privately owned facilities in a street or alley in connection with the construction of a structure in airspace leased under this subchapter. No such facilities may be removed or relocated unless the Commissioner has approved all arrangements for such removal or relocation. (Oct. 17, 1968, Pub. L. 90–598, § 6, 82 Stat. 1167.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7–951.

§ 7–946. Applicability of zoning and other laws to airspace structures.

Zoning laws and regulations and other laws and regulations applicable to the construction, use, and occupancy of buildings and premises, including building, electrical, plumbing, housing, health, and fire regulations, shall be applicable to structures constructed in airspace. (Oct. 17, 1968, Pub. L. 90–598, § 7, 82 Stat. 1167.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7–951.

§ 7–947. Airspace and structures erected thereon deemed real property for purpose of taxation, water and sewer charges—Exemptions.

For the purposes of this subchapter, airspace and structures constructed or erected in airspace shall be deemed to be real property and shall be liable to assessment, taxation, and water and sewer service charges by the District from the beginning of the term or period of such lease. For the purposes of real property assessments and taxation, the value of airspace, other than any structure constructed or erected in airspace, shall be its fair market value. No tax or assessment shall be levied with respect to airspace or structures in airspace—

(1) occupied exclusively by the Federal Government or the District government, or

(2) occupied and used by one or more organizations which, under section 47–801a are exempt from real property taxation.

(Oct. 17, 1968, Pub. L. 90–598, § 8, 82 Stat. 1167.)

CODIFICATION

The above text is designated as subsection (a) of section 8, act Oct. 17, 1968, Pub. L. 90–598. However, there is no subsection (b) in the original act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7–951.

§ 7–948. Deposit of rents, fees, taxes, assessments, sewer and water charges—Payment of expenditures.

(a) Except as provided by subsection (b), all collections, including rents and fees, received by the District under this subchapter shall be deposited in the Treasury of the United States in a trust fund, from which may be paid, in the same manner as is provided by law for other expenditures of the District, such expenditures as are necessary to carry out the purposes of this subchapter, including necessary expenses connected with the operation, maintenance, and disposition of property coming into the possession of the District by reason of a default under a lease entered into under this subchapter. The unobligated balance in such trust fund in excess of $100,000 as of the end of any fiscal year shall be deposited in the Treasury to the credit of such special funds or the general fund of the District in such proportions as the Commissioner may determine.

(b) Taxes (including payments in lieu of taxes), special assessments, and sanitary sewer and water service charges shall be deposited directly to the respective funds to which such revenues are normally deposited. (Oct. 17, 1968, Pub. L. 90–598, § 9, 82 Stat. 1168.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7–951.

§ 7–949. Restoration of airspace to its prior condition upon expiration or termination of lease—Cost of restoration.

If, upon the expiration or termination of a lease of airspace under this subchapter—

(1) the Commissioner determines that any structure constructed or erected in such airspace should be removed or such airspace should be restored to its condition prior to the construction or erection of such structure, and

(2) the lessee or his successor in interest, upon the request of the Commissioner, fails, after a reasonable time, to remove such structure or to restore such airspace to its condition prior to the construction or erection of such structure,

the Commissioner may remove such structure and restore such airspace. The cost of such removal and restoration shall be assessed against the abutting properties as a tax. Such tax shall be collected in the manner prescribed by section 5–506, for the collection of amounts assessed as a tax under that section. (Oct. 17, 1968, Pub. L. 90–598, § 10, 82 Stat. 1168.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7–951.

§ 7–950. Regulations by District Council, authorized—Penalties for violating regulations—Notice of violation—Suit to enjoin continuing violations.

(a) The District of Columbia Council shall, after public hearing, promulgate such regulations as may be necessary to carry out this subchapter.

(b) Any regulations promulgated under this subchapter may provide for the imposition of a fine of not more than $300, or imprisonment of not more than ninety days, or both, for any violation of such regulations. Prosecution for violations of such regulations shall be conducted in the name of the District by the Corporation Counsel.

(c) The Commissioner shall—

(1) give any person violating a regulation promulgated under this subchapter notice of such violation, and

(2) set a date by which such person shall comply with such regulation.

Each day after such date during which there is a failure to comply with such regulation shall be a separate offense.

(d) The Commissioner may maintain an action in the Superior Court of the District of Columbia to enjoin the continuing violation of any regulation adopted, under the authority of this subchapter, by the District of Columbia Council or by the Zoning Commission. (Oct. 17, 1968, Pub. L. 90–598, § 11, 82 Stat. 1168; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(27), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(27) of Act July 29, 1970, Public Law 91–358, amended subsec. (d) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 7–951.

§ 7–951. Federal and District Governments authorized to construct airspace structures under certain conditions.

The Federal Government and District government are each authorized, without regard to the requirements of sections 7–943 through 7–950, to construct any structure in airspace, subject to the following conditions:

(1) The government proposing to construct any structure in airspace shall have fee simple title to real property abutting such real property.

(2) The airspace to be occupied by such structure shall be only within the frontages of the real property abutting such airspace which are directly opposite.

(3) The airspace to be occupied by such structure shall not be used to deprive any real property, not owned by the Federal Government or District government, of its easements of light, air, or access.

(4) The construction of any such structure by the District government across a street or alley, the title to which is in the United States, shall be in accordance with an agreement between the Commissioner and the Attorney General of the United States, subject to such terms and conditions as the Attorney General and the Commissioner agree to include in the agreement.

(5) Section 5–428 shall apply to the construction of any structure in such airspace by the Federal Government and, to the extent required by subsection (c) of section 1–1005, to the construction of any structure in such airspace by the District government.

(6) Plans for the construction of any structure in such airspace by the Federal Government or the District government shall be subject to review by the National Capital Planning Commission in accordance with section 1–1005.

(7) The construction of any such structure by the Federal Government or the District government shall be subject to the recommendations of the Commission of Fine Arts to the extent required by sections 5–410 and 5–411 or sections 5–801 to 5–805.

(Oct. 17, 1968, Pub. L. 90–598, § 12, 82 Stat. 1169.)

§ 7–952. Actions by Federal and District Governments to recover use of leased airspace—Compensation to be paid on recovery of leased airspace.

If the Federal Government or the District government brings an action to recover the use of airspace leased under this subchapter, the government having title to the street or alley over or under which such airspace is located shall pay to the lessee of such airspace the fair market value of the remainder of his leasehold interest in such airspace. If the Federal Government recovers the use of airspace over or under a street to which it has title, the District government shall pay to the Federal Government an amount equal to the rents and fees received by the District government for the rental of such airspace or an amount equal to the fair market value of the remainder of the leasehold interest in such airspace, whichever is smaller. (Oct. 17, 1968, Pub. L. 90–598, § 13, 82 Stat. 1170.)

§ 7–953. Area exempted from provisions of this subchapter.

This subchapter shall not apply to airspace within the area in the District bounded on the north by G Street Northeast and Northwest, on the south by G Street Southeast and Southwest, on the east by Eleventh Street Northeast and Southeast, and on the west by Third Street Southwest and Northwest. (Oct. 17, 1968, Pub. L. 90–598, § 14, 82 Stat. 1170.)

Chapter 10.—REAL ESTATE SALE OR RENT SIGNS

§ 7–1001. Signs on sidewalks or parking prohibited—Number of signs—Removal—Penalties.

No sign or advertisement relating to the sale, rent, or lease of land or premises shall be located on the sidewalk or parking of any street, avenue, or road in the District of Columbia. One painted or printed sign or advertisement for the sale, rent, or lease of land or premises may, with the written consent of the owner or legal representative of the owner, be placed, by any one of not exceeding three real estate agents, on any lot, piece, or parcel of land abutting on a street, avenue, or road in said District, or attached to the exterior of any building fronting thereon. The commissioners of the District of Columbia are authorized to use the police authority vested in them, to require the removal of any sign or advertisement in violation of this provision, and to institute prosecutions, in the Superior Court of the District of Columbia, against persons violating the provisions hereof, and every such person, upon conviction of such violation, shall be fined in the sum of not less than $5 nor more than $25. (Mar. 4, 1913, 37 Stat. 974, ch. 150, § 7; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 11.—BARBED-WIRE FENCES

§ 7–1102. Construction or maintenance outside fire limits.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–1104. Penalties.

Any person violating any of the provisions of this chapter shall, upon conviction thereof in the Superior Court of the District of Columbia be fined not more than ten dollars for each day such violation shall continue. (July 8, 1898, 30 Stat. 725, ch. 640, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 7–1105. Notice by publication—Removal by inspector of buildings—Cost, assessment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 12.—MISCELLANEOUS

§ 7–1201. Jurisdiction over Conduit Road transferred to Commissioners—Abutting property owners—Assessment—Application of municipal laws.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(172) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 7–1205. Denomination of streets as "business streets."

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(173) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the

right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

CROSS REFERENCE

For provisions relating to rental of public space, see title 7, chapter 9.

§ 7–1207. Removal of obstructions from streets—Duty of Director of National Park Service.

NOTES TO DECISIONS

Care of streets and sidewalks

In denying a motion by the defendant, District of Columbia, for Judgment Notwithstanding the Verdict or in the alternative for a New Trial, the court held that the District of Columbia has primary responsibility for maintaining streets and sidewalks in reasonably safe condition, regardless of who owns the fee in such streets and sidewalks, in absence of special circumstances such as accumulation of snow or ice or improvement of the way in question by the United States. *J. M. Conner et al.* v. *United States et al.* (1970, 309 F. Supp. 446).

§ 7–1208. Penalty for failure to replace paving stones.

NOTES TO DECISIONS

Care of streets and sidewalks

In denying a motion by the defendant, District of Columbia, for Judgment Notwithstanding the Verdict or in the alternative for a New Trial, the court held that the District of Columbia has primary responsibility for maintaining streets and sidewalks in reasonably safe condition, regardless of who owns the fee in such streets and sidewalks, in absence of special circumstances such as accumulation of snow or ice or improvement of the way in question by the United States. *J. M. Conner et al.* v. *United States et al.* (1970, 309 F. Supp. 446).

§ 7–1210. Sidings may be laid by Baltimore and Potomac Railroad Company—Authority of Commissioners.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(174) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 7–1212. Baltimore and Ohio Railroad Company authorized to extend tracks and maintain additional stations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(175) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 7–1214. Streets to be under or over railroad tracks—Cost of opening streets—Maintenance.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–1215. Subways and viaducts to eliminate grade crossings authorized in discretion of Commissioners—Cost.

(a) The Commissioners of the District of Columbia be, and they are hereby, authorized and directed to construct viaducts and approaches thereto, to carry Fern and Varnum Streets over the tracks and right of way of the Baltimore and Ohio Railroad Company and to construct a viaduct and approaches thereto to carry Eastern Avenue over the tracks and rights of way of the Philadelphia, Baltimore and Washington Railroad Company and the Baltimore and Ohio Railroad Company, in accordance with plans and profiles of said works to be approved by the said commissioners: *Provided,* That one-half of the total cost of constructing the viaduct and approaches thereto at Varnum Street and one-half of the total cost of constructing the viaduct and approaches thereto at Fern Street shall be borne and paid by the said Baltimore and Ohio Railroad Company, its successors and assigns, and that one-half of the total cost of constructing the viaduct and approaches thereto at Eastern Avenue shall be borne and paid by the said Philadelphia, Baltimore and Washington Railroad Company and the said Baltimore and Ohio Railroad Company, their successors and assigns, in proportion to the widths of their respective land holdings, to the collector of taxes of the District of Columbia for deposit to the credit of the District of Columbia, and the said half cost shall be valid and subsisting liens against the franchises and property of the railroad companies concerned and shall constitute a legal indebtedness against the said railroad companies in favor of the District of Columbia, and said liens may be enforced in the name of the District of Columbia by a bill in equity brought by the said commissioners in the Superior Court of the District of Columbia, or by any other legal proceeding against the said railroad companies: *Provided,* That no street railway company shall use the said viaduct or any approaches thereto herein authorized for its tracks until said companies shall have paid to the collector of taxes of the District of Columbia, a sum equal to one-fourth of the total cost of constructing said viaducts and approaches, to be applied to the credit of the District of Columbia. No limitation shall run against claims made by the District of Columbia under the provisions of this section.

(b) For the purpose of carrying into effect the provisions of this section, the sum of $405,000 is hereby authorized to be appropriated, payable in like manner as other appropriations, for the expenses of the government of the District of Columbia, and the said Commissioners are authorized to expend such sum or sums as may be necessary for personal services, engineering, and incidental expenses. The said commissioners are further authorized to acquire, out of the appropriation herein authorized, the necessary land, or any portion of the same, by purchase at such price or prices as in their judgment they may deem reasonable and fair, or, in their discretion, by condemnation in accordance with the provisions of sections 7–202 to 7–212, 7–214, 7–215, under a proceeding or proceedings in rem instituted in the Superior Court of the District of Columbia: *Provided,* That of the entire amount found to be due and awarded by the jury as damages for, and in respect of, the land to be condemned to carry the provisions of this section into effect, plus the costs and expenses

of the proceeding or proceedings taken pursuant hereto, not less than one-half thereof shall be assessed by the jury as benefits, the amounts collected as benefits to be covered into the Treasury of the United States to the credit of the District of Columbia.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 155(c)(28), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(28) of Act July 29, 1970, Public Law 91–358, amended subsections (a) and (b) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–1218. Branch tracks, spurs, or sidings authorized—Plats or charts kept on file.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(176) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to approving the construction of railroad tracks, etc., and plans for branch sidings as provided in the note to this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 7–1219. Extensions through public grounds authorized—Exceptions—Approval of Fine Arts Commission.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(177) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 7–1220. Authority of Commissioners under § 7–1215 not affected.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–1222. Company to pay portion of cost of paving or repairing streets.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–1226. Plans to be approved by Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–1227. Grade crossings subject to approval of Commissioners—Overhead bridge.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–1228. Authority of Commissioners not abridged.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–1230. Electrification of existing steam-railroad lines—Structures, equipment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–1232. Construction of conduit systems—Government use of three ducts.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–1233. Jurisdiction not abridged.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–1235. Employment of temporary special and technical employees—Report by Commissioners—Tenure of employment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–1236. Employment of temporary laborers and mechanics—Per diem rate of pay.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(178) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to the approval of wage rates fixed and adjusted from time to time by a wage board, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 7–1237. Employment of horses, horse-drawn vehicles, and motortrucks—Report by Commissioners—Temporary use under special conditions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 7–1238. Employment of personnel and equipment to execute work payable from miscellaneous trust fund deposits—Delegation of hiring authority by Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 15.—POTOMAC RIVER BASIN COMPACT

Sec.

7–1501. Consent of Congress to compact—Rights reserved by Congress.
7–1502. Consent of Congress to amended compact—Authority of Commissioner of the District of Columbia—Rights reserved by Congress.

§ 7–1501. Consent of Congress to compact—Rights reserved by Congress.

(a) The consent of Congress is hereby given to the States of Maryland and West Virginia and the Commonwealths of Virginia and Pennsylvania and

the District of Columbia to enter into the compact to create a Potomac Valley Conservancy District and to establish an Interstate Commission on the Potomac River Basin, and to each and every part and article thereof: *Provided,* That nothing contained in such compact shall be construed as impairing or in any manner affecting any right or jurisdiction of the United States in and over the region which forms the subject of this compact.

(b) The right to alter, amend, or repeal this section is hereby expressly reserved. (July 11, 1940, ch. 579, 54 Stat. 748.)

CODIFICATION

Section is also classified to 33 U.S.C. 567b.

§ 7–1502. Consent of Congress to amended compact—Authority of Commissioner of the District of Columbia—Rights reserved by Congress.

(a) The consent of Congress is hereby given to the States of Maryland and West Virginia and the Commonwealths of Virginia and Pennsylvania and the District of Columbia to adopt and enter into the amended compact to create a Potomac Valley Conservancy District and to establish an Interstate Commission on the Potomac River Basin and every part and article thereof: *Provided,* That nothing contained in such amended compact shall be construed as imparing or in any manner affecting any right or jurisdiction of the United States in and over the region which forms the subject of this compact: *And provided further,* That the consent herein given does not extend to section (F)(2) of article II of the amended compact.

(b) The Commissioner of the District of Columbia is authorized to enter into, on behalf of the District of Columbia, the amended compact hereinbefore recited.

(c) The right to alter, amend, or repeal this section is hereby expressly reserved. (Sept. 25, 1970, Pub. L. 91–407, 84 Stat. 856.)

CODIFICATION

Section is also classified to 33 U.S.C. 567b–1.

POTOMAC RIVER RESOURCES AND POLLUTION STUDY AND REPORT BY MAR. 31, 1971

Section 704(a) of Act Jan. 5, 1971, Pub. L. 91–650 provided:

(a) The Administrator of the Environmental Protection Agency, in consultation with the Secretary of the Interior, the Chief of Engineers of the Corps of Engineers of the United States Army and the Commissioner of the District of Columbia, shall conduct a special study of and make recommendations with respect to—

(1) the water pollution problems of the part of the Potomac River that is located within the Washington metropolitan area

(2) the water resources of the Potomac River for such area.

(3) the problems relating to the provision of adequate facilities for water, sewer, sanitation, and related services for such area, and

(4) the establishment of an appropriate independent area or regional entity to control and resolve such water pollution problems, to regulate and control such water resources, and to provide such services at reasonable costs.

The study shall contain specific recommendations as to the extent and amount of funding that would be necessary to establish and maintain such an area or regional entity, recommendations as to any functions now performed by Federal and District of Columbia entities which should be transferred to such an area or regional entity, and recommendations as to provisions for protection of employees of entities that would be affected by such transfers.

(b) The Administrator of the Environmental Protection Agency shall report to the Congress the results of the study under subsection (a), together with his recommendations, on or before March 31, 1971.

REFERENCE IN TEXT

The amended compact reads as follows:

"COMPACT

"WHEREAS, it is recognized that abatement of existing pollution and the control of future pollution of interstate streams can best be promoted through a joint agency representing the several states located wholly or in part within the area drained by any such interstate stream; and

"WHEREAS, the Congress of the United States has given its consent to the States of Maryland and West Virginia, the Commonwealths of Pennsylvania and Virginia, and the District of Columbia to enter into a compact providing for the creation of a conservancy district to consist of the drainage basin of the Potomac river and the main and tributary streams therein, for "the purpose of regulating, controlling, preventing, or otherwise rendering unobjectionable and harmless the pollution of the waters of said Potomac drainage area by sewage and industrial and other wastes'; and

"WHEREAS, the regulation, control and prevention of pollution is directly affected by the quantities of water in said streams and the uses to which such water may be put, thereby requiring integration and coordination of the planning for the development and use of the water and associated land resources through cooperation with, and support and coordination of, the activities of Federal, State, local and private agencies, groups, and interests concerned with the development, utilization and conservation of the water and associated land resources of the said conservancy district;

"Now, therefore, the States of Maryland and West Virginia, the Commonwealths of Pennslyvania and Virginia, and the District of Columbia, hereinafter designated signatory bodies, do hereby create the Potomac Valley Conservancy District, hereinafter designated the Conservancy District, comprising all of the area drained by the Potomac River and its tributaries; and also, do hereby create, as an agency of each signatory body, the Interstate Commission on the Potomac River Basin, hereinafter designated the Commission, under the articles of organization as set forth below.

"ARTICLE I

"The Interstate Commission on the Potomac River Basin shall consist of three members from each signatory body and three members appointed by the President of the United States. Said Commissioners, other than those appointed by the President, shall be chosen in a manner and for the terms provided by law of the signatory body from which they are appointed and shall serve without compensation from the Commission but shall be paid by the Commission their actual expenses incurred and incident to the performance of their duties.

"(A). The Commission shall meet and organize within thirty days after the effective date of this compact, shall elect from its number a chairman and vice-chairman, shall adopt suitable bylaws, shall make, adopt and promulgate such rules and regulations as are necessary for its management and control, and shall adopt a seal.

"(B). The Commission shall appoint and, at its pleasure, remove or discharge such officers and legal, engineering, clerical, expert and other assistants as may be required to carry the provisions of this compact into effect, and shall determine their qualifications and fix their duties and compensation. Such personnel as may be employed shall be employed without regard to any civil service or other similar requirements for employees of any of the signatory bodies. The Commission may maintain one or more offices for the transaction of its business and may meet at any time or place within the area of the signatory bodies.

"(C). The Commission shall keep accurate accounts of all receipts and disbursements and shall make an annual report thereof and shall in such report set forth in detail the operations and transactions conducted by it pursuant to this compact. The Commission, however, shall not incur any obligations for administrative or other expenses prior to the making of appropriations adequate to meet the same nor shall in any way pledge the credit of any of the signatory bodies. Each of the signatory bodies reserves the right to make at any time an examination and audit of the accounts of the Commission.

"(D). A quorum of the Commission shall, for the transaction of business, the exercise of any powers, or the performance of any duties, consist of at least six members of the Commission who shall represent at least a majority of the signatory bodies: *Provided, however,* That no action of the Commission relating to policy or stream classification or standards shall be binding on any one of the signatory bodies unless at least two of the Commissioners from such signatory body shall vote in favor thereof.

"ARTICLE II

"The Commission shall have the power:

"(A). To collect, analyze, interpret, coordinate, tabulate, summarize and distribute technical and other data relative to, and to conduct studies, sponsor research and prepare reports on, pollution and other water problems of the Conservancy District.

"(B). To cooperate with the legislative and administrative agencies of the signatory bodies, or the equivalent thereof, and with other commissions and Federal, local governmental and non-governmental agencies, organizations, groups and persons for the purpose of promoting uniform laws, rules or regulations for the abatement and control of pollution of streams and the utilization, conservation and development of the water and associated land resources in the said Conservancy District.

"(C). To disseminate to the public information in relation to stream pollution problems and the utilization, conservation and development of the water and associated land resources of the Conservancy District and on the aims, views, purposes and recommendations of the Commission in relation thereto.

"(D). To cooperate with, assist, and provide liaison for and among, public and non-public agencies and organizations concerned with pollution and other water problems in the formulation and coordination of plans, programs and other activities relating to stream pollution or to the utilization, conservation or development of water or associated land resources, and to sponsor cooperative action in connection with the foregoing.

"(E). In its discretion and at any time during or after the formulation thereof, to review and to comment upon any plan or program of any public or private agency or organization relating to stream pollution or the utilization, conservation or development of water or associated land resources.

"(F)(1). To make, and, if needful from time to time, revise and recommend to the signatory bodies, reasonable minimum standards for the treatment of sewage and industrial or other wastes now discharged or to be discharged in the future to the streams of the Conservancy District, and also for cleanliness of the various streams in the Conservancy District.

"(2). To establish reasonable physical, chemical and bacteriological standards of water quality satisfactory for various classifications of use. It is agreed that each of the signatory bodies through appropriate agencies will prepare a classification of its interstate waters in the District in entirety or by portions according to present and proposed highest use, and for this purpose technical experts employed by appropriate state water pollution control agencies are authorized to confer on questions relating to classification of interstate waters affecting two or more states. Each signatory body agrees to submit its classification of its interstate waters to the Commission with its recommendations thereon.

"The Commission shall review such classification and recommendations and accept or return the same with its comments. In the event of return, the signatory body will consider the comments of the Commission and resubmit the classification proposal, with or without amendment, with any additional comments for further action by the Commission.

"It is agreed that after acceptance of such classification, the signatory body through its appropriate state water pollution control agencies will work to establish programs of treatment of sewage and industrial wastes which will meet or exceed standards established by the Commission for classified waters. The Commission may from time to time make such changes in definitions of classifications and in standards as may be required by changed conditions or as may be necessary for uniformity and in a manner similar to that in which these standards and classifications were originally established.

"It is recognized, owing to such variable factors as location, size, character and flow and the many varied uses of the waters subject to the terms of this compact, that no single standard of sewage and waste treatment and no single standard of quality of receiving waters is practical and that the degree of treatment of sewage and industrial wastes should take into account the classification of the receiving waters according to present and proposed highest use, such as for drinking water supply, bathing and other recreational purposes, maintenance and propagation of fish life, industrial and agricultural uses, navigation and disposal of wastes.

"ARTICLE III

"For the purpose of dealing with the problems of pollution and of water and associated land resources in specific areas which directly affect two or more, but not all, signatory bodies, the Commission may establish Sections of the Commission consisting of the Commissioners from such affected signatory bodies: *Provided, however,* That no signatory body may be excluded from any Section in which it wishes to participate. The Commissioners appointed by the President of the United States may participate in any Section. The Commission shall designate, and from time to time may change, the geographical area with respect to which each Section shall function. Each Section shall, to such extent as the Commission may from time to time authorize, have authority to exercise and perform with respect to its designated geographical area any power or function vested in the Commission, and in addition may exercise such other powers and perform such functions as may be vested in such Section by the laws of any signatory body or by the laws of the United States. The exercise or performance by a Section of any power or function vested in the Commission may be financed by the Commission, but the exercise or performance of powers or functions vested solely in a Section shall be financed through funds provided in advance by the bodies, including the United States, participating in such Section.

"ARTICLE IV

"The moneys necessary to finance the Commission in the administration of its business in the Conservancy District shall be provided through appropriations from the signatory bodies and the United States, in the manner prescribed by the laws of the several signatory bodies and of the United States, and in amounts as follows:

"The pro rata contributions shall be based on such factors as population; the amount of industrial and domestic pollution; and a flat service charge; as shall be determined from time to time by the Commission, subject, however, to the approval, ratification and appropriation of such contribution by the several signatory bodies.

"ARTICLE V

"Pursuant to the aims and purposes of this compact, the signatory bodies mutually agree:

"1. Faithful cooperation in the abatement of existing pollution and the prevention of future pollution in the streams of the Conservancy District and in planning for

the utilization, conservation and development of the water and associated land resources thereof.

"2. The enactment of adequate and, insofar as is practicable, uniform legislation for the abatement and control of pollution and control and use of such streams.

"3. The appropriations of biennial sums on the proportionate basis as set forth in Article IV.

"ARTICLE VI

"This compact shall become effective immediately after it shall have been ratified by the majority of the legislature of the States of Maryland and West Virginia, the Commonwealths of Pennsylvania and Virginia, and by the Commissioner of the District of Columbia, and approval by the Congress of the United States: *Provided, however*, That this compact shall not be effective as to any signatory body until ratified thereby.

"ARTICLE VII

"Any signatory body may, by legislative act, after one year's notice to the Commission, withdraw from this compact."

TITLE 8.—PARKS AND PLAYGROUNDS

Chapter 1.—PARKS AND PLAYGROUNDS

§ 8–108. Park system—Control—Inclusions—Exclusions, improvements, parking spaces—"Business streets"—Conditions requisite.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(179) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

NOTES TO DECISIONS

Bus tours on Capitol Mall

A certificate of convenience and necessity is not required of a concessionaire under contract with the Secretary of Interior to conduct bus tours of Capitol Mall from Washington Metropolitan Area Transit Commission. *Universal Interpretive Shuttle Corporation* v. *Washington Metropolitan Area Transit Commission et al.* (1968, 89 S. Ct. 354, 393 U.S. 186; rev'g 390 F. 2d 474).

Transit system's franchise did not give it absolute monopoly of sightseeing service on Capitol Mall and it was not protected against competition from concessionaire acting under contract with Secretary of Interior. *Id.*

Preliminary injunction

The court should not have granted a preliminary injunction against Secretary of Interior, in dispute with transit system over Secretary's plan to establish a visitor interpretative shuttle service within Mall area of District of Columbia, which plan combined transportation of visitors between points of interest with monologue on historical significance, where record revealed, inter alia, vital differences between operation proposed by Secretary and transit system's regular route and sightseeing services in the vicinity of the Mall. *S. L. Udall, Secretary, etc.* v. *D.C. Transit System, Inc.* (1968, 404 F. 2d 1358, 131 U.S. App. D.C. 381. See also 390 F. 2d 474).

§ 8–109. Control by director of vehicles and traffic regulations.

NOTES TO DECISIONS

Bus tours on Capitol Mall

A certificate of convenience and necessity is not required of a concessionaire under contract with Secretary of Interior to conduct bus tours of Capitol Mall from Washington Metropolitan Area Transit Commission. *Universal Interpretive Shuttle Corporation* v. *Washington Metropolitan Area Transit Commission et al.* (1968, 89 S. Ct. 354, 393 U.S. 186; rev'g 390 F. 2d 474).

Transit system's franchise did not give it absolute monopoly of sightseeing service on Capitol Mall and it was not protected against competition from concessionaire acting under contract with Secretary of Interior. *Id.*

§ 8–110. Street parking.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(180) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 8–114. Portion of Water Street made part of park system—Consent of owners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Pan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–115. Transfer of jurisdiction over property between United States and District of Columbia.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(181) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5–724, 7–136.

NOTES TO DECISIONS

Construction

Statute providing that federal and district authorities administering properties within District of Columbia owned by the United States or by the district are authorized to transfer jurisdiction over parts or all of such properties among or between themselves for purposes of administration and maintenance would prevail over statute providing there should not be erected on any reservation, park or public grounds of the United States within the district any building or structure without express authority of Congress if land of United States is transferred to district for use different than that to which it was being put. *D.C. Federation of Civic Associations, Inc. et al.* v. *T. F. Airis et al.* (1967, 275 F. Supp. 540; rev'd 391 F. 2d 478, 129 U.S. App. D.C. 125).

Where United States transferred parkland to District of Columbia for use as bridge approach, statute, providing that there shall not be erected on any park of the United States within the District of Columbia any building or structure without express authority of Congress, did not apply. *Id.*

Transfer of jurisdiction

Under statute providing that federal and district authorities administering properties within District of Columbia owned by the United States or by the district are authorized to transfer jurisdiction over parts or all of such properties among or between themselves for purposes of administration and maintenance, district was authorized to use area which had been acquired by the United States solely for park purposes for bridge approach. *D.C. Federation of Civic Associations, Inc., et al.* v. *T. F. Airis et al.* (1967, 275 F. Supp. 540; rev'd 391 F. 2d 478, 129 U.S. App. D.C. 125).

Under statute providing that federal and district authorities administering properties within District of Columbia owned by the United States or by the district are authorized to transfer jurisdiction over parts or all of such properties among or between themselves for purposes of administration and maintenance, district and United States had authority to use parklands in connection with construction of three highway projects. *Id.*

§ 8–116. Transfer of jurisdiction—Existing laws unaffected.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5–724.

§ 8–118. Whitehaven Parkway—Federal property in exchange.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–119. Whitehaven Parkway—Exchange authorized with property owners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–120. Whitehaven Parkway—Plats to be prepared.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–126. Jurisdiction over reservation No. 185.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–127. Use of spaces or reservations for widening roadways.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–130. Part of Washington Aqueduct for playground purposes.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–131. Authority to make rules and regulations for playgrounds and recreation centers.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–132. Volunteer aid for playgrounds.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–136. Jurisdiction of reservation No. 32 transferred to Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–137. Jurisdiction of reservation No. 290 transferred to Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–138. Jurisdiction of reservation No. 8 transferred to Commissioners.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(182) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 8–140. Public convenience stations—Authority to make rules, regulations, and charges.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(183) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 8–141. Part of reservation 13 transferred to Commissioners for use as burial ground.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–142. Site of former Georgetown Reservoir transferred to jurisdiction of Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–143. Authority to make regulations for care of public grounds.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–144. Authority to make regulations—Extended to sidewalks.

NOTES TO DECISIONS

Bus tours on Capitol Mall

A certificate of convenience and necessity is not required of a concessionaire under contract with the Secretary of Interior to conduct bus tours of Capitol Mall from Washington Metropolitan Area Transit Commission. *Universal Interpretive Shuttle Corporation* v. *Washington Metropolitan Area Transit Commission et al.* (1968, 89 S. Ct. 354, 393 U.S. 186; rev'g 390 F. 2d 474).

Transit system's franchise did not give it absolute monopoly of sightseeing service on Capitol Mall and it was not protected against competition from concessionaire acting under contract with Secretary of Interior. *Id.*

§ 8–151. Rock Creek Park—Injury or diminution of the flow of water in Rock Creek.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–162. Glover Parkway and Children's Playground.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(184) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 8–168. Public bathing beach authorized.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(185) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section insofar as they relate to the making of regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 8–170. Bathing pools and beaches—Operation—Fees.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 2.—RECREATION BOARD

ARTICLE I.—MEMBERSHIP OF THE RECREATION BOARD

§ 8–201. Recreation Board created.

ABOLITION OF RECREATION BOARD AND POSITION OF SUPERINTENDENT OF RECREATION

Section 5 of Reorg. Plan No. 3 of 1968, effective June 30, 1968, provided:

"*Abolition.* The Recreation Board, together with the position of Superintendent of Recreation, is hereby abolished. The Commissioner of the District of Columbia shall make such provisions as he may deem necessary with respect to winding up the outstanding affairs of the Recreation Board and the Superintendent of Recreation."

DEFINITIONS CONTAINED IN REORGANIZATION PLAN NO. 3, 1968

Section 1 of Reorg. Plan No. 3 of 1968, effective June 30, 1968, provided:

"*Definitions.* (a) As used in this reorganization plan, the term 'the Recreation Board' means the District of Columbia Recreation Board provided for in D.C. Code, sec. 8–201 and in other law.

"(b) References in this reorganization plan to any provision of the District of Columbia Code are references to the provisions of statutory law codified under that provision and include the said provision as amended, modified, or supplemented prior to the effective date of this recrganization plan."

DEPARTMENT OF RECREATION

Org. Ord. No. 10, dated June 27, 1968, established a Department of Recreation, under the direction and control of the Commissioner, headed by a Director of Recreation. For complete details see the order set out in the appendix to title 1.

§ 8–202. Composition of Board—Qualifications—Tenure.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS OF THE BOARD OF COMMISSIONERS

Section 501 of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"*Status of certain agencies.* (a) Functions now vested in any agency listed in subsection (b) of this section, or in any officer or body of or under such agency, shall remain so vested; but all functions of the Board of Commissioners of the District of Columbia and all functions of the President of that Board or of any other member of the Board, relating to the listed agency or its functions or to an officer or body thereof or to the functions of such officer or body shall be deemed to be transferred by Part IV of this reorganization plan.

"(b) The following agencies of the Corporation are the agencies referred to in subsection (a) of this section:

"(1) Board of Education (including the public school system).

"(2) Board of Library Trustees (including the public libraries).

"(3) Recreation Board.

"(4) Public Service Commission.

"(5) Zoning Commission.

"(6) Zoning Advisory Council.

"(7) Board of Zoning Adjustment.

"(8) Office of the Recorder of Deeds.

"(9) Armory Board."

ARTICLE II.—FUNCTIONS AND ADMINISTRATIVE RESPONSIBILITIES OF THE BOARD

§ 8–208. Determination of general policy—Supervision of expenditures.

TRANSFER OF FUNCTIONS TO THE COMMISSIONER OF THE DISTRICT

Sections 2 and 3 of Reorg. Plan No. 3 of 1968, effective June 30, 1968, provided:

"*Transfer of functions to Commissioner.* There are hereby transferred to the Commissioner of the District of Columbia all functions of the Recreation Board or of its chairman and members and all functions of the Superintendent of Recreation (appointed pursuant to D.C. Code, sec. 8–209).

"*Delegations.* The functions transferred by the provisions of section 2 hereof shall be subject to the provisions of section 305 of Reorganization Plan No. 3 of 1967 (32 F.R. 11671)."

§ 8–209. Superintendent of Recreation—Appointment and duties—Qualifications—Other employees—Compensation—Volunteer services—Night differential for nonregularly scheduled work.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO THE COMMISSIONER OF THE DISTRICT

Sections 2 and 3 of Reorg. Plan No. 3 of 1968, effective June 30, 1968, provided:

"*Transfer of functions to Commissioner.* There are hereby transferred to the Commissioner of the District of Columbia all functions of the Recreation Board or of its chairman and members and all functions of the Superintendent of Recreation (appointed pursuant to D.C. Code, sec. 8–209).

"*Delegations.* The functions transferred by the provisions of section 2 hereof shall be subject to the provisions of section 305 of Reorganization Plan No. 3 of 1967 (32 F.R. 11671)."

ABOLITION OF RECREATION BOARD AND POSITION OF SUPERINTENDENT OF RECREATION

Section 5 of Reorg. Plan No. 3 of 1968, effective June 30, 1968, provided:

"*Abolition.* The Recreation Board, together with the position of Superintendent of Recreation, is hereby abolished. The Commissioner of the District of Columbia shall make such provisions as he may deem necessary with respect to winding up the outstanding affairs of the Recreation Board and the Superintendent of Recreation."

§ 8–211. Trust fund created—Depository for fees and receipts—Expenditures—Quarterly audit.

INCIDENTAL TRANSFER PROVISIONS IN REORGANIZATION PLAN NO. 3, 1968

Section 4 of Reorg. Plan No. 3 of 1968, effective June June 30, 1968, provided:

"*Incidental transfers.* (a) All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, available, or to be made available in connection with the functions of the Recreation Board or the Superintendent of Recreation are hereby transferred to the Commissioner of the District of Columbia.

"(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided in subsection (a) of this section shall be carried out in such manner as he may direct and by such agencies as he shall designate."

§ 8–212. Annual budget.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–213. Annual report.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

ARTICLE III.—RELATIONSHIP OF THE BOARD TO OTHER AGENCIES

§ 8–214. Transfer of functions of Community Center and Playgrounds Department—Transfer of unexpended funds.

TRANSFER OF FUNCTIONS TO THE COMMISSIONER OF THE DISTRICT

Sections 2 and 3 of Reorg. Plan No. 3 of 1968, effective June 30, 1968, provided:

"*Transfer of functions to Commissioner.* There are hereby transferred to the Commissioner of the District of Columbia all functions of the Recreation Board or of its chairman and members and all functions of the Superintendent of Recreation (appointed pursuant to D.C. Code, sec. 8–209).

"*Delegations.* The functions transferred by the provisions of section 2 hereof shall be subject to the provisions of section 305 of Reorganization Plan No. 3 of 1967 (32 F.R. 11671)."

§ 8–215. Control of lands, buildings, and facilities used.

INCIDENTAL TRANSFER PROVISIONS IN REORGANIZATION PLAN NO. 3, 1968

Section 4 of Reorg. Plan No. 3 of 1968, effective June 30, 1968, provided:

"*Incidental transfers.* (a) All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, available, or to be made available in connection with the functions of the Recreation Board or the Superintendent of Recreation are hereby transferred to the Commissioner of the District of Columbia.

"(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided in subsection (a) of this section shall be carried out in such manner as he may direct and by such agencies as he shall designate."

§ 8–216. Powers of Board of Education, Commissioners of District of Columbia, or National Park Service unabridged.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–217. Agreements for maintenance and improvement of playgrounds, etc., under control of Board of Education, Commissioners of District of Columbia, or National Park Service—Transfer of equipment and personnel.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 8–218. Services of other agencies.

INCIDENTIAL TRANSFER PROVISIONS IN REORGANIZATION PLAN NO. 3, 1968

Section 4 of Reorg. Plan No. 3 of 1968, effective June 30, 1968, provided:

"*Incidental transfers.* (a) All personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, available, or to be made available in connection with the functions of the Recreation Board or the Superintendent of Recreation are hereby transferred to the Commissioner of the District of Columbia.

"(b) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided in subsection (a) of this section shall be carried out in such manner as he may direct and by such agencies as he shall designate."

TITLE 9.—PUBLIC BUILDINGS AND GROUNDS

Chapter 1.—REGULATING PROVISIONS

Sec.
9–118a. Protection of Grounds.
9–118b. Use of part of the United States Capitol Grounds as a recreation area.
9–123. Unlawful conduct on Capitol Grounds or in Buildings.
9–125. Prosecution and punishment of offenses—General laws not superseded.
9–126a. Detail of personnel from Metropolitan Police to Capitol Police Board—Duties and status of detailed personnel.
9–132. Definitions.

§ 9–101. Wharf property—Control by Commissioners of District—Authority to make rules and regulations—Jurisdiction of Chief of Engineers.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(186) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 9–102. Authority to make rules and regulations for wharf property—Leases—Rents.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(187) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 9–118. Capitol grounds area.

The United States Capitol Grounds shall comprise all squares, reservations, streets, roadways, walks, and other areas as defined on a map entitled "Map showing areas comprising United States Capitol Grounds", dated June 25, 1946, approved by the Architect of the Capitol and recorded in the Office of the Surveyor of the District of Columbia in book 127, page 8, including all additions added thereto by law subsequent to June 25, 1946, and the jurisdiction and control over the United States Capitol Grounds, heretofore vested by law in the Architect of the Capitol, is hereby extended to the entire area of the United States Capitol Grounds, and the Architect of the Capitol shall be responsible for the maintenance and improvement thereof: *Provided,* That those streets and roadways in said United States Capitol Grounds shown on said map as being under the jurisdiction and control of the Commissioners of the District of Columbia shall continue under such jurisdiction and control, and said Commissioners shall be responsible for the maintenance and improvement thereof: *Provided further,* That the Commissioners of the District of Columbia shall be permitted to enter any part of said United States Capitol Grounds for the purpose of repairing or maintaining or, subject to the approval of the Architect of the Capitol, for the purpose of constructing or altering, any utility service of the District of Columbia government. (July 31, 1946, 60 Stat. 718, ch. 707, § 1; Oct. 20, 1967, Pub. L. 90–108, § 1(a), 81 Stat. 275.)

AMENDMENTS

1967—Section 1(a), Pub. L. 90–108, amended section by inserting after the words "book 127, page 8," the words "including all additions added thereto by law subsequent to June 25, 1946," and by striking out the "as defined on the aforementioned map."

PROSECUTION OF PRIOR VIOLATIONS NOT AFFECTED BY OCT. 20, 1967 AMENDMENT. APPLICABILITY OF PUB. L. 90–108 TO VIOLATIONS OCCURRING AFTER OCT. 20, 1967

Pub. L. 90–108, section 3 provided as follows:

"Prosecutions for violations of sections 9–118 to 9–126, 9–127 to 9–132 and of section 22–3111, occurring prior to the enactment of these amendments [Amendments to sections 9–118, 9–123, 9–125, 9–132 and 22–3111] shall not be affected by these amendments or abated by reason thereof. The provisions of amendments to sections 9–118, 9–123, 9–125, 9–132, and 22–3111 shall be applicable to violations occurring after its enactment."

ACQUISITION OF PROPERTY TO EXTEND ADDITIONAL SENATE OFFICE BUILDING

Pub. L. 85–429, May 29, 1958, 72 Stat. 148, and Pub. L. 85–591. Aug. 6, 1958, 72 Stat. 495, authorized the Architect of the Capitol to acquire certain real property for purposes of extension of Additional Senate Office Building Site or for Additions to United States Capitol Grounds.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

ORDER OF THE HOUSE OFFICE BUILDING COMMISSION RELATING TO CERTAIN PROPERTIES
(October 17, 1967)

WHEREAS, under authority of Section 1202 of Public Law 24, 84th Congress (69 Stat. 41), approved April 22, 1955, known as the "Additional House Office Building Act of 1955", the Architect of the Capitol, at the direction of the House Office Building Commission, acquired during the period 1955 to 1960, on behalf of the United States, by condemnation, seven squares in the District of Columbia, located south of Independence Avenue, in the vicinity of the United States Capitol Grounds, as a site for an additional office building and other necessary facilities for the House of Representatives and for additions to the United States Capitol Grounds;

WHEREAS, under the aforesaid authority, the Architect of the Capitol, at the direction of the Commission, acquired in 1965 on behalf of the United States, through transfer from the Redevelopment Land Agency, Square 639, also located south of Independence Avenue, for an addition to the United States Capitol Grounds;

WHEREAS, the aforesaid eight squares are identified and bound as follows: *Square 635,* bounded on the north by Independence Avenue, on the east by Delaware Avenue, on the west by First Street, on the south by C Street; *Square 637,* bounded on the north by C Street, on the east by South Capitol Street, on the west by Delaware Avenue, on the south by D Street; *Square South of 635,* bounded

on the north by C Street, on the east by Delaware Avenue, on the west and south by Canal Street; *Square 691,* bounded on the north by C Street, on the east by New Jersey Avenue, on the west by South Capitol Street, on the south by D Street; *Square 692,* bounded on the north by C Street, on the east by First Street, on the west by New Jersey Avenue, on the south by D Street; *Square 732 north* bounded on the north by Independence Avenue, on the east by Second Street, on the west by First Street, on the south by Carroll Street; *Square 732 south,* bounded on the north by Carroll Street, on the east by Second Street, on the west by First Street, on the south by C Street; and *Square 639,* bounded on the north by D Street, on the east by South Capitol Street, on the west and south by Canal Street;

WHEREAS, title to all real property in these 8 squares is now vested in fee simple absolute in the United States of America;

WHEREAS, subsequent to acquisition of these 8 squares, under the aforesaid authority, all alleys in these squares were closed and vacated, as were also Delaware Avenue between Independence Avenue and C Street and Carroll Street between First and Second Streets, by the Commissioners of the District of Columbia, and all areas between the property lines and outer faces of curbs surrounding these squares and Square 636 were transferred from the jurisdiction of the Commissioners of the District of Columbia to the jurisdiction of the Architect of the Capitol;

WHEREAS, the Rayburn House Office Building has been constructed on Squares 635 and 636 (the latter square being already owned by the government and having been combined with Square 635 as a site for this building under the aforesaid authority), and the said building is now maintained by the Architect of the Capitol as a part of the House Office Buildings, and the sidewalks and other paved and grassed areas surrounding this building are now maintained as part of the Capitol Grounds;

WHEREAS, underground garages for the House of Representatives have been constructed in Squares 637 and 691 and are now maintained by the Architect of the Capitol as part of the House Office Buildings, and the areas above these garages have been landscaped as a part of the Capitol Grounds;

WHEREAS, Squares South of 635 and 639 have been developed as parking lots for automobiles for Members and employees of the House and are now maintained as part of the Capitol Grounds;

WHEREAS, part of Square 692 is occupied by the Congressional Hotel, acquired by the Architect of the Capitol under the aforesaid authority and leased to the Knott Hotels Corporation for use as a hotel, and the remainder of this square has been converted into a parking lot for automobiles for Members and employees of the House and is now maintained as a part of the Capitol Grounds;

WHEREAS, Squares 732 north and south were acquired as an addition to the Capitol Grounds, are now maintained as part of the Capitol Grounds, and will continue to be so maintained until such time as required for construction thereon of the Library of Congress James Madison Memorial Building, authorized by Public Law 89–260, approved October 19, 1965;

WHEREAS, the aforesaid Additional House Office Building Act provides, in pertinent part, with respect to these properties, as follows:

"* * * At such time or times as may be fixed by order of the House Office Building Commission, (1) any real property acquired under, or made available for the purposes of, this chapter shall become part of the United States Capitol Grounds and subject to the Act entitled 'An Act to define the area of the United States Capitol Grounds, to regulate the use thereof, and for other purposes', approved July 31, 1946 (sections 9–118, 9–119 to 9–126, 9–127 to 9–132, and 40 U.S.C., secs. 193a–193m, 212a, and 212b), and (2) the building and all facilities constructed pursuant to section 1201 of this chapter shall become subject to such Act approved July 31, 1946, and to the provisions of law relating to the control, supervision, and care of the House Office Building contained in the Act approved Mar. 4, 1907, as amended (40 U.S.C., sec. 175)."

NOW, THEREFORE, in formal compliance with the aforecited provisions of the Additional House Office Building Act, the House Office Building Commission, in confirmation of actions heretofore taken by the Commission, hereby orders:

1. The Rayburn House Office Building, the subway connecting such building to the Capitol Building, the pedestrian tunnels connecting such building to the Longworth House Office Building, the underground garages in Squares 637 and 691 and the tunnels connecting these garages to the House Office Buildings, are hereby declared to be House Office Buildings and, as such, are hereby made subject to those provisions of the Act of July 31, 1946 (sections 9–118, 9–119 to 9–126, 9–127 to 9–132, and 40 U.S.C., secs. 193a–193m, 212a, and 212b), including any amendments to such Act, which are applicable to the Capitol Buildings, and to the Act of Mar. 4, 1907 (40 U.S.C. 175).

2. All other real property acquired by the Architect of the Capitol under authority of the Additional House Office Building Act is hereby declared to be part of the United States Capitol Grounds and is hereby made subject to the Act of July 31, 1946 (sections 9–118, 9–119 to 9–126, 9–127 to 9–132, and 40 U.S.C., secs. 193a–193m, 212a, and 212b), including any amendments to such Act.

3. Nothing herein shall be construed to contravene (a) the provisions of Public Law 89–260 authorizing the future use of Squares 732 north and south as a site for the Library of Congress James Madison Memorial Building; or (b) the authority delegated by the House Office Building Commission to the Select House Committee under authority of H. Res. 514, 90th Congress, pertaining to the direction and supervision of the use and operation of the four House Garages and outdoor parking lots.

4. This order shall become effective immediately.

HOUSE OFFICE BUILDING COMMISSION.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9–118b, 9–131.

NOTES TO DECISIONS

Constitutionality

In this case, the court held that where statute prohibiting parades or assemblages on grounds of United States Capitol as enforced would continue to be bar to assertion of war protestors' rights of free assembly and petition and rights asserted were of continuing character, ad hoc committee of war protestors' action for declaration that the statute was unconstitutional was not moot because committee had dispersed. *Jeanette Rankin Brigade et al.* v. *Chief of the Capitol Police et al.* (1969, 421 F. 2d 1090, 137 U.S. App. D.C. 155).

Construction

In this case, the court held that the conduct of defendants charged with unlawful entry in refusing to quit steps of United States Capitol after being ordered to do so by Chief of Capitol Police and in reading names of Vietnam war dead in ordinary speaking voice did not come within prohibition of Capitol Grounds statute as interpreted. *United States* v. *J. Nicholson et al.* (D.C. App. 1970, 263 A. 2d 56).

§ 9–118a. Protection of grounds.

It shall be the duty of the Capitol police hereafter to prevent any portion of the Capitol grounds and terraces from being used as play grounds or otherwise, so far as may be necessary to protect the public property, turf and grass from destruction. (Apr. 29, 1876, ch. 86, 19 Stat. 41.)

CODIFICATION

Section is also set out in 40 U.S.C. § 214.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9–118b.

§ 9–118b. Use of part of the United States Capitol Grounds as a recreation area.

Notwithstanding the provisions of section 9–118a and the provisions of sections 9–118, 9–119 to 9–126,

9–127 to 9–132, the Architect of the Capitol is authorized to permit the Board of Commissioners of the District of Columbia to operate for recreational purposes only, and without any improvement to said land, that part of the United States Capitol Grounds known as Square 732 in the District of Columbia, bounded by Independence Avenue, S.E., Second Street, S.E., C Street, S.E., and First Street, S.E., and intersected by Carroll Street, for such period of time as said land is not required for building or other purposes by the Architect of the Capitol. (Apr. 29, 1966, Pub. L. 89–698, title IV, § 401, 80 Stat. 1072.)

CODIFICATION

Section is also classified to 40 U.S.C. § 214a.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§§ 9–119 to 9–122.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 9–118b, 9–125.

§ 9–123. Unlawful conduct on Capitol Grounds or in buildings.

(a) It shall be unlawful for any person or group of persons—

(1) Except as authorized by regulations which shall be promulgated by the Capitol Police Board:

(A) to carry on or have readily accessible to the person of any individual upon the United States Capitol Grounds or within any of the Capitol Buildings any firearm, dangerous weapon, explosive, or incendiary device; or

(B) to discharge any firearm or explosive, to use any dangerous weapon, or to ignite any incendiary device, upon the United States Capitol Grounds or within any of the Capitol Buildings; or

(C) to transport by any means upon the United States Capitol Grounds or within any of the Capitol Buildings any explosive or incendiary device; or

(2) Knowingly, with force and violence, to enter or to remain upon the floor of either House of the Congress.

(b) It shall be unlawful for any person or group of persons willfully and knowingly—

(1) to enter or to remain upon the floor of either House of the Congress, to enter or to remain in any cloakroom or lobby adjacent to such floor, or to enter or to remain in the Rayburn Room of the House or the Marble Room of the Senate, unless such person is authorized, pursuant to rules adopted by that House or pursuant to authorization given by that House, to enter or to remain upon such floor or in such cloakroom, lobby, or room;

(2) to enter or to remain in the gallery of either House of the Congress in violation of rules governing admission to such gallery adopted by that House or pursuant to authorization given by that House;

(3) to enter or to remain in any room within any of the Capitol Buildings set aside or designated for the use of either House of the Congress or any Member, committee, subcommittee, officer, or employee of the Congress or either House thereof with intent to disrupt the orderly conduct of official business;

(4) to utter loud, threatening, or abusive language, or to engage in any disorderly or disruptive conduct, at any place upon the United States Capitol Grounds or within any of the Capitol Buildings with intent to impede, disrupt, or disturb the orderly conduct of any session of the Congress or either House thereof, or the orderly conduct within any such building of any hearing before, or any deliberations of, any committee or subcommittee of the Congress or either House thereof;

(5) to obstruct, or to impede passage through or within, the United States Capitol Grounds or any of the Capitol Buildings;

(6) to engage in any act of physical violence upon the United States Capitol Grounds or within any of the Capitol Buildings; or

(7) to parade, demonstrate, or picket within any of the Capitol Buildings.

(c) Nothing contained in this section shall forbid any act of any Member of the Congress, or any employee of a Member of the Congress, any officer or employee of the Congress or any committee or subcommittee thereof, or any officer or employee of either House of the Congress or any committee or subcommittee thereof, which is performed in the lawful discharge of his official duties. (July 31, 1946, 60 Stat. 718, ch. 707, § 6; Aug. 6, 1962, Pub. L. 87–571, 76 Stat. 307; Oct. 20, 1967, Pub. L. 90–108, § 1(b), 81 Stat. 276.)

AMENDMENTS

1967—Section 1(b), Pub. L. 90–108, amended section to read as above set out. For provisions of section prior to amendment see main volume.

PROSECUTION OF PRIOR VIOLATIONS NOT AFFECTED BY OCT. 20, 1967 AMENDMENT. APPLICABILITY OF PUB. L. 90–108 TO VIOLATIONS OCCURRING AFTER OCT. 20, 1967

Pub. L. 90–108, section 3 provided as follows:

"Prosecutions for violations of sections 9–118 to 9–126, 9–127 to 9–132 and of section 22–3111, occurring prior to the enactment of these amendments [Amendments to sections 9–118, 9–123, 9–125, 9–132 and 22–3111] shall not be affected by these amendments or abated by reason thereof. The provisions of amendments to sections 9–118, 9–123, 9–125, 9–132 and 22–3111 shall be applicable to violations occurring after its enactment."

CROSS REFERENCE

Order of House Office Building Commission relating to certain Capitol Grounds properties, see note to § 9–118.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9–118b, 9–125.

§ 9–124. Parades or assemblages and displays forbidden in Capitol Grounds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9–118b, 9–125.

NOTES TO DECISIONS

Construction

In this case, the court held that the conduct of defendants charged with unlawful entry in refusing to quit steps of United States Capitol after being orderd to do so by Chief of Capitol Police and in reading names of Vietnam war dead in ordinary speaking voice did not come within prohibition of Capitol Grounds statute as interpreted. *United States* v. *J. Nicholson et al.* (D.C. App. 1970, 263 A. 2d 56).

Convening of three-judge court

Where constitutional challenges to statutes were plainly unsubstantial, application for convening of three-judge court would be dismissed. *J. Rankin Brigade et al.* v. *Chief of the Capitol Police et al.* (1968, 278 F. Supp. 233).

§ 9–125. Prosecution and punishment of offenses—General laws not superseded.

(a) Any violation of section 9–123(a), and any attempt to commit any such violation, shall be a felony punishable by a fine not exceeding $5,000, or imprisonment not exceeding five years, or both.

(b) Any violation of sections 9–119 to 9–122, 9–123(b) and 9–124, and any attempt to commit any such violation, shall be a misdemeanor punishable by a fine not exceeding $500, or imprisonment not exceeding six months, or both.

(c) Violations of this Act, including attempts or conspiracies to commit such violations, shall be prosecuted by the United States attorney or his assistants in the name of the United States. None of the general laws of the United States and none of the laws of the District of Columbia shall be superseded by any provision of this Act. Where the conduct violating this Act also violates the general laws of the United States or the laws of the District of Columbia, both violations may be joined in a single prosecution. Prosecution for any violation of section 9–123(a) or for conduct which constitutes a felony under the general laws of the United States or the laws of the District of Columbia shall be in the United States District Court for the District of Columbia. All other prosecutions for violations of this Act may be in the Superior Court of the District of Columbia. Whenever any person is convicted of a violation of this Act and of the general laws of the United States or the laws of the District of Columbia, in a prosecution under this subsection, the penalty which may be imposed for such violation is the highest penalty authorized by any of the laws for violation of which the defendant is convicted. (July 31, 1946, 60 Stat. 719, ch. 707, § 8; July 8, 1963, Pub. L. 88–60, § 1, 77 Stat. 77; Oct. 20, 1967, Pub. L. 90–108, § 1(c), 81 Stat. 277; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (c) by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

1967—Section 1(c), Pub. L. 90–108, amended section to read as above set out. For provisions of section prior to amendment see main volume of the code.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

REFERENCE IN TEXT

This "Act" referred to in text has reference to sections 9–118, 9–119 to 9–126, 9–127 to 9–132.

PROSECUTION OF PRIOR VIOLATIONS NOT AFFECTED BY OCT. 20, 1967 AMENDMENT. APPLICABILITY OF PUB. L. 90–108 TO VIOLATIONS OCCURRING AFTER OCT. 20, 1967

Pub. L. 90–108, section 3 provided as follows:

"Prosecutions for violations of sections 9–118 to 9–126, 9–127 to 9–132 and of section 22–3111, occurring prior to the enactment of these amendments [Amendments to sections 9–118, 9–123, 9–125, 9–132 and 22–3111] shall not be affected by these amendments or abated by reason thereof. The provisions of amendments to sections 9–118, 9–123, 9–125, 9–132 and 22–3111 shall be applicable to violations occurring after its enactment."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9–118b.

§ 9–126. Policing of Capitol Buildings and Grounds—Powers of Capitol Police—Arrests by Metropolitan Police.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9–118b.

§ 9–126a. Detail of personnel from Metropolitan Police to Capitol Police Board—Duties and status of detailed personnel.

The Commissioner of the District of Columbia is authorized and directed to make such details [detail of personnel from Metropolitan Police Force to Capitol Police Board] upon the request of the Board. Personnel so detailed shall, during the period of such detail, serve under the direction and instructions of the Board and are authorized to exercise the same authority as members of such Metropolitan Police and members of the Capitol Police and to perform such other duties as may be assigned by the Board. Reimbursement for salaries and other expenses of such detail personnel shall be made to the government of the District of Columbia, and any sums so reimbursed shall be credited to the appropriation or appropriations from which such salaries and expenses are payable and shall be available for all the purposes thereof: *Provided,* That any person detailed under the authority of this paragraph or under similar authority in the Legislative Branch Appropriation Act, 1942, and the Second Deficiency Appropriation Act, 1940, from the Metropolitan Police of the District of Columbia shall be deemed a member of such Metropolitan Police during the period or periods of any such detail for all purposes of rank, pay, allowances, privileges, and benefits to the same extent as though such detail had not been made, and at the termination thereof any such person who was a member of such police on July 1, 1940, shall have a status with respect to rank, pay, allowances, privileges, and benefits which is not less than the status of such person in such police at the end of such detail. (Aug. 18, 1970, Pub. L. 91–382, § 101, 84 Stat. 816.)

REFERENCES IN TEXT

The Second Deficiency Appropriation Act, 1940 and the Legislative Branch Appropriation Act, 1942 are set out in 54 Stat. 629 and 55 Stat. 456, respectively.

SIMILAR PROVISIONS

Provisions similar to those in this section are contained in the following legislative appropriation acts and in a number of earlier appropriation acts:

1970—Dec. 12, 1969, Pub. L. 91–145, § 101, 83 Stat. 349.
1969—July 23, 1968, Pub. L. 90–417, § 101, 82 Stat. 406.
1968—July 28, 1967, Pub. L. 90–57, § 101, 81 Stat. 134.

CODIFICATION

The provisions of this section were taken from the Legislative Appropriation Act for 1971 and are contained in Pub. L. 91–382, 84 Stat. 816, under the heading "Capitol Police Board". The portions in brackets were inserted by the codifiers for the sake of clarity.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§§ 9–127, 9–128.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 9–118b.

§ 9–129. Capitol Police Board power to suspend prohibitions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9–118b.

NOTES TO DECISIONS

Constitutionality

In this case, the court held that where statute prohibiting parades or assemblages on grounds of United States Capitol as enforced would continue to be bar to assertion of war protestors' rights of free assembly and petition and rights asserted were of continuing character, ad hoc committee of war protestors' action for declaration that the statute was unconstitutional was not moot because committee had dispersed. *Jeanette Rankin Brigade et al.* v. *Chief of the Capitol Police et al.* (1969, 421 F. 2d 1090, 137 U.S. App. D.C. 155).

§ 9–130. Concerts on Capitol Grounds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9–118b.

§ 9–131. Traffic regulations by Capitol Police Board—Penalties—Prosecutions.

(a) The Capitol Police Board, consisting of the Sergeant at Arms of the United States Senate, the Sergeant at Arms of the House of Representatives, and the Architect of the Capitol, shall have exclusive charge and control of the regulation and movement of all vehicular and other traffic, including the parking and impounding of vehicles and limiting the speed thereof, within the United States Capitol Grounds, except on those streets and roadways shown on the map referred to in section 9–118 as being under the jurisdiction and control of the Commissioners of the District of Columbia; and said Board is hereby authorized and empowered to make and enforce all necessary regulations therefor and to prescribe penalties for violation of such regulations, such penalties not to exceed a fine of $300 or imprisonment for not more than ninety days. Notwithstanding the foregoing provisions of this section those provisions of sections 40–601 to 40–617, for the violation of which specific penalties are provided in said sections, shall be applicable to the United States Capitol Grounds. Prosecutions for violation of such regulations shall be in the Superior Court of the District of Columbia, upon information by the Corporation Counsel of the District of Columbia or any of his assistants.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (a) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9–118b.

§ 9–132. Definitions.

As used in this Act—

(1) The term "Capitol Buildings" means the United States Capitol, the Senate and House Office Buildings and garages, the Capitol Power Plant, all subways and enclosed passages connecting two or more of such structures, and the real property underlying and enclosed by any such structure.

(2) The term "firearm" shall have the same meaning as when used in section 901(3) of title 15, United States Code.

(3) The term "dangerous weapon" includes all articles enumerated in section 22–3214(a) and also any device designed to expel or hurl a projectile capable of causing injury to persons or property, daggers, dirks, stilettoes, and knives having blades over three inches in length.

(4) The term "explosive" shall have the same meaning as when used in section 121(1) of title 50, United States Code.

(5) The term "act of physical violence" means any act involving (1) an assault or any other infliction or threat of infliction of death or bodily harm upon any individual, or (2) damage to or destruction of any real property or personal property. (July 31, 1946, 60 Stat. 721, ch. 707, § 16(a); Oct. 20, 1967, Pub. L. 90–108, § 1(d), 81 Stat. 277.)

REFERENCE IN TEXT

This "Act" referred to in text is set out in sections 9–118 to 9–126, 9–127 to 9–132.

AMENDMENTS

1967—Section 1(d), Pub. L. 90–108, amended section to read as above set out. For provisions of section prior to this amendment see main volume of the Code.

PROSECUTION OF PRIOR VIOLATIONS NOT AFFECTED BY OCT. 20, 1967 AMENDMENT. APPICABILITY OF PUB. L. 90–108 TO VIOLATIONS OCCURRING AFTER OCT. 20, 1967

Pub. L. 90–108, section 3 provided as follows:

"Prosecutions for violations of sections 9–118 to 9–126, 9–127 to 9–132 and of section 22–3111 occurring prior to the enactment of these amendments [Amendments to sections 9–118, 9–123, 9–125, 9–132 and 22–3111] shall not be affected by these amendments or abated by reason thereof. The provisions of amendments to sections 9–118, 9–123, 9–125, 9–132 and 22–3111 shall be applicable to violations occurring after its enactment."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9–118b.

§ 9–133. District of Columbia buildings—Control of Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–134. Designation of employees to protect life and property outside the District—Powers of arrest—Weapons and uniforms.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(188 and 189) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (a) and (b) relating to fixing penalties of bonds of employees, and prescribing by regulation the uni-

form and identification badge to be worn by individuals, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 9–135. Rules and regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(190) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 9–137. Acceptance of collateral for appearance before United States Commissioner—Deposit of collateral.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–138. Agreements with States—Charges for services.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–139. Tunnel, location of under Capitol and Botanic Garden grounds.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–140. Approval of Architect of Capitol required—Prescription of conditions by him—Commissioners authorized to use certain areas for tunnel.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–141. Right, title and interest to grounds used for tunnel to remain in the United States—Jurisdiction and responsibility for tunnel.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–144. Architect authorized to convey to Commissioners of the District of Columbia certain grounds for construction of Innerloop Freeway System—Jurisdiction over grounds conveyed.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–145. Commissioners authorized to use certain area bounded by Fourth Street, Pennsylvania Avenue, Third Street, and North Mall Drive Northwest, for tunnel—Conditions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 2.—CONSTRUCTION OF PUBLIC BUILDINGS

Sec.
9–220. Construction program for public needs in education, health, welfare, public safety, recreation and other fields authorized—Financing conditions—Loans to be advanced to Commissioners—Rate of interest—Repayment of loans—Definitions.

§ 9–201. Municipal center—Establishment.

The Commissioners of the District of Columbia are authorized and directed to acquire by purchase, condemnation, or otherwise, all of squares numbered 490, 491, 533, and reservation 10, in the District of Columbia, including buildings and other structures thereon, as a site for a municipal center, and to construct thereon necessary buildings to house municipal activities: *Provided*, That the Commissioners of the District of Columbia are hereby authorized to close and vacate such portions of streets and alleys as lie between or within such squares, as in the judgment of said commissioners may be necessary, and the portions of such streets and alleys so closed and vacated shall thereupon become parts of such sites: *Provided further,* That if this property or any part thereof shall be condemned, the Commissioners of the District of Columbia shall be entitled to enter immediately into the possession of any such property for which an award shall have been made by paying the amount of such award into the registry of the Superior Court of the District of Columbia. (Feb. 28, 1929, 45 Stat. 1408, ch. 379, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(29), 84 Stat. 571.)

AMENDMENT

1970—Section 155(c)(29) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(191) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section as provided in par. 191, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 9–202. Municipal center—Rental.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–203. Repealed. Sept. 9, 1959, Pub. L. 86–249, § 17(4), 73 Stat. 484.

Section, based on § 9 of Act Mar. 4, 1907, ch. 2918, 34 Stat. 1371 (40 U.S.C. 33), restricted expenditures for construction of electric light and power plants in municipal buildings.

§ 9–204. Public buildings—Loans for construction authorized—Projects enumerated—Location determined.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–206. Public buildings—Reimbursement, proportion of tax receipts to be credited to reimbursement fund—Anticipating payments.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–207. Public buildings—Reports to be submitted to Congress.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–208. May borrow money from United States for public works—Approval of President—Certain projects authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–209. Purposes for which funds may be used.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–210. Repayment of funds.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–211. Estimates and report to Congress.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–212. Limitations on borrowing power.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–213. Interest on funds borrowed from Public Works Administration.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–215. Authorized to borrow additional funds for public works—Approval of President—Certain project specified.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–216. Purposes for which funds may be used.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–217. Repayment — Interest — Included in annual budget.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–218. Estimates and report to Congress.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–219. Supervision and approval of plans and specifications.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–220. Construction program for public needs in education, health, welfare, public safety, recreation and other fields authorized—Financing conditions—Loans to be advanced to Commissioners—Rate of interest—Repayment of loans—Definitions.

* * * * *

(b) (1) To assist in financing the cost of constructing facilities required for activities financed by the general fund of the District, the Commissioners are hereby authorized to accept loans for the District from the United States Treasury, and the Secretary of the Treasury is hereby authorized to lend to the Commissioners such sums as may hereafter be appropriated for such purpose, except that no loan made under this subsection after June 30, 1967, shall cause the amount which is required to be paid in any fiscal year out of the general fund of the District as principal and interest on the aggregate indebtedness of the District to exceed—

(A) in the case of an amount required to be paid in a fiscal year ending in 1971 or 1972, 9 per centum of the general revenue of the District which the Commissioners estimate will be credited to the general fund of the District during such fiscal year; of

(B) in the case of an amount required to be paid in a fiscal year ending after June 30, 1972, 9 per centum of the general revenue of the District credited to the general fund of the District for the fiscal year ending June 30, 1972.

(2) For purposes of paragraph (1) of this subsection, the term "general revenue of the District" means the sum of—

(A) the tax revenues of the District, including but not limited to the revenues (including penalties and interest) derived from the following taxes: (i) taxes imposed on real and tangible personal property, (ii) sales and gross receipts taxes, (iii) taxes on the incomes of individuals, corporations, and unincorporated businesses, (iv) real estate deed recordation taxes, and (v) inheritance and estate taxes;

(B) proceeds from the motor vehicle registration fees collected under section 40–103; and

(C) the amount of the appropriation authorized by section 47–2501a.

(3) The appropriation of any loan made under this subsection shall not be construed to alter or to eliminate the procedures for consultation, advice, and recommendation provided in chapter 10 of title 1. $216,500,000 of the principal amount of the loans authorized to be made to the Commissioner under this subsection shall be utilized to make the contributions authorized by section 1–1443. To such extent, not exceeding $166,500,000, as may be necessary for this purpose, the District of Columbia may exceed the limitation on aggregate indebtedness established pursuant to this subsection. $40,000,000 of the principal amount of such loans shall be utilized to carry out the purposes of the District of Columbia Public Education Act (Public Law 89–791).

(4) Any loan made under this subsection shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in the Treasury of the United States to the credit of the general fund of the District.

* * * * *

(f) Repealed. Nov. 3, 1967, Pub. L. 90–120, Title II, § 202. (As amended Nov. 3, 1967, Pub. L. 90–120, title II, §§ 201, 202, 81 Stat. 339, 340; Dec. 9, 1969, Pub. L. 91–143, § 4(b), 83 Stat. 321; Jan. 5, 1971, Pub. L. 91–650, title I, § 103(a), 84 Stat. 1930.)

REFERENCES IN TEXT

The District of Columbia Public Education Act, is set out as sections 29–420, 31–1601 to 31–1612, 31–1621 to 31–1625 and as amendments of sections 29–415 to 29–418.

AMENDMENTS

1971—Section 103(a) of Act Jan. 5, 1971, Pub. L. 91–650, amended—

(1) Subsection (b)(1)(A) by striking out "1968, 1969, or 1970" and inserting "1971 or 1972" and by striking out "6 per centum" and inserting "9 per centum"; and

(2) Subsection (b)(1)(B) by striking out "1970" each place it appears and inserting "1972" and by striking out "6 per centum" and inserting "9 per centum".

1969—Subsection (b) of section 4, act Dec. 9, 1969, Pub. L. 91–143, struck out of subsection (b), par. (3) the following:

"$50,000,000 of the principal amount of the loans authorized to be made to the Commissioners under this subsection shall be utilized to carry out the purposes of the National Capital Transportation Act of 1965 (D.C. Code, secs. 1–1404, 1–1421—1–1426); and" and inserted in lieu thereof the following:

"$216,500,000 of the principal amount of the loans authorized to be made to the Commissioner under this subsection shall be utilized to make the contributions authorized by section 4 of the National Capital Transportation Act of 1969. To such extent, not exceeding $166,500,000, as may be necessary for this purpose, the District of Columbia may exceed the limitation on aggregate indebtedness established pursuant to this subsection."

1967—Section 201, Title II, Act Nov. 3, 1967, Pub. L. 90–120 amended subsection (b) to read as set out in Supp. I of the 1967 edition of the code. For provisions of this subsection prior to this amendment see 1967 edition of the code.

PARTIAL REPEAL

Section 202, Title II, Act Nov. 3, 1967, Pub. L. 90–120 repealed subsection (f). This subsection provided: "No loans shall be advanced pursuant to this section after June 30, 1973."

SHORT TITLE

Section 1, Act Nov. 3, 1967, Pub. L. 90–120 provided: "That this Act [amending section 47–2501a, subsection 9–220(b), repealing subsection 9–220(f) and enacting section 1–320] may be cited as the 'District of Columbia Federal Payment Authorization and Borrowing Authority Act of 1967'."

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB L. 91–650

See secs. 801–803 of Act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1–1442, 31–1606.

Chapter 3.—SALE OF PUBLIC LANDS

§ 9–301. Commissioners authorized to sell real estate.

SALE, LEASE OR TRANSFER OF CERTAIN UNITED STATES PROPERTY IN THE DISTRICT TO ORGANIZATION OF AMERICAN STATES, FOREIGN GOVERNMENTS AND ORGANIZATIONS

Act, Oct. 8, 1968, Pub. L. 90–553, provided:

"That in order to facilitate the conduct of foreign relations by the Department of State in Washington, District of Columbia, through the creation of a more propitious atmosphere for the establishment of foreign government and international organization offices and other facilities, the Secretary of State is authorized to sell or lease to foreign governments and international organizations property owned by the United States in the Northwest section of the District of Columbia bounded by Connecticut Avenue, Van Ness Street, Reno Road, and Tilden Street, upon such terms and conditions as he may prescribe. Every lease, contract of sale, deed, and other document of transfer shall provide (a) that the foreign government shall devote the property transferred to use for legation purposes, or (b) that the international organization shall devote the property transferred to its official uses.

"SEC. 2. (a) The Secretary of State is hereby authorized to transfer or convey to the Organization of American States, without monetary consideration, all right, title, and interest to a parcel of land not to exceed eight acres, to be selected by the Secretary of State, within the area described in section 1 of this Act. The deed conveying such property shall provide that the Organization of American States shall use the property solely as a site for a headquarters building and related improvements, and shall contain such other terms and conditions as he may prescribe.

"(b) The conveyance authorized by section 2(a) of this Act shall not be made until the Organization of American States has agreed that it will transfer or convey, without monetary consideration, all right, title, and interest of the Organization of American States in the building and other improvements on the property known as lot 802 in square 147 in the District of Columbia to the United States as soon as the site referred to in section 2(a) is developed for use as a headquarters. The agreement provided for in this subsection shall be in such form as may be satisfactory to the Secretary of State.

"(c) If so requested by the Organization of American States, and with funds provided in advance by the Organization of American States, the Administrator of General Services is hereby authorized to design, construct, and equip a headquarters building for the Organization of American States on the property conveyed to it pursuant to section 2(a) of this Act.

"SEC. 3. The Secretary of State is hereby authorized to transfer or convey to the Organization of American States, without monetary consideration, all right, title, and interest of the United States in and to the property known as lot 800 in square south 173 in the District of Columbia and the buildings and other improvements on such property for use by the Organization of American States.

"SEC. 4. The Act of June 20, 1938 (D.C. Code, 1967 ed., secs. 5–413 or 5–428) shall not apply to buildings constructed on property transferred or conveyed pursuant to section 1, 2(a), or 3 of this Act: *Provided,* That each transferee or grantee of property so transferred or conveyed shall comply with all other applicable District of Columbia codes and regulations relating to building construction, equipment, and maintenance. Plans showing the location, height, bulk, number of stories, and size of, and the provisions for open space and offstreet parking in and around, such buildings shall be approved by the National Capital Planning Commission, and plans showing the height and appearance, color, and texture of the materials of exterior construction of such buildings shall be approved by the Commission of Fine Arts prior to the construction thereof.

"SEC. 5. The construction, reconstruction, relocation, and rebuilding of (a) public streets and sidewalks, (b) public sewers and their appurtenances, (c) water mains, fire hydrants, and other parts of the public water supply and distribution system, and (d) the fire alarm system, which are within the area described in section 1 of this Act and which are occasioned in carrying out the provisions of this Act, shall be provided by the Secretary of State, in coordination with the Administrator of General Services and the government of the District of Columbia.

"SEC. 6. The costs of carrying out the purposes of section 5 of this Act shall be funded from the proceeds of the sale or lease of property to foreign governments and international organizations as provided for in the first section of this Act. All proceeds received from such sales or leases shall, notwithstanding the provisions of section 3617 of the Revised Statutes (31 U.S.C. 484) or any other law, be paid into a special account with the Treasurer of the United States, such account to be administered by the Secretary of State for the purposes set out in section 5 of this Act. All sums remaining in such special account after completion of the projects authorized in section 5 shall be covered into the Treasury as miscellaneous receipts."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(192) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to making the finding that real estate is no longer required for a public purpose, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 9–302. Expenses of sales of real estate.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–303. Commissioners to execute deeds to sell real estate.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 4.—EXCHANGE OF DISTRICT-OWNED LAND

§ 9–401. Commissioners empowered to effect exchange.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(193) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 9–402. Publication of intended exchange.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–403. Authorization for execution or acceptance of proper deed of conveyance.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 9–404. Authority to pay or receive amounts as part of consideration for exchange.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 5.—REPAIRS AND IMPROVEMENTS

§ 9–501. Repairs and improvements—Working fund.

CONTINUATION OF 1960 ACT

Section 15 of the District of Columbia Appropriations Act of Nov. 13, 1967, Pub. L. 90–134, 81 Stat. 441, provided in part:

"Except as otherwise provided herein, limitations and legislative provisions contained in the District of Columbia Appropriation Act, 1961, shall be continued for the fiscal year 1968." Similar provisions are contained in the following appropriation act:

1971—July 16, 1970, Pub. L. 91–337, § 14, 84 Stat. 437.
1970—Dec. 24, 1969, Pub. L. 91–155, § 15, 83 Stat. 433.
1969—Aug. 10, 1968, Pub. L. 90–473, § 15, 82 Stat. 700.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TITLE 10.—WEIGHTS, MEASURES, AND MARKETS

Chapter 1.—WEIGHTS, MEASURES, AND MARKETS

§ 10–101. Department of Weights, Measures, and Markets created—Director—Assistants and employees.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 10–102. Director to give bond and take oath.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 10–103. Director to have exclusive powers—Weighing and measuring devices to be examined—Condemnation of devices not conforming to standards—Unapproved weighing and measuring devices not to be possessed or used—Director not required to approve devices belonging to United States.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(194) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in relation to prescribing the manner of approving and sealing, stamping, or marking devices or appliances, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 10–117. Packages of food to be marked with weight, measure, or count—Commissioners may authorize variation, tolerances, and exemptions as to small packages.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(195) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 10–118. Cord of wood—Standard—Commissioners to fix standard load of certain split wood.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(196) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 10–127. Commissioners may establish tolerances and specifications.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(197) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 10–128. Weighmasters—Public scales—Fees.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(198) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to granting of licenses and fixing fees, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 10–130. Enactment and enforcement of rules and regulations—Supervision of produce and other markets—Investigations and reports.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(199) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section regarding regulations for the control, regulation, and supervision of markets, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 10–134. Penalties—Conduct of prosecutions.

Any person violating any of the provisions of this chapter shall be punished by a fine not to exceed $500, or by both such fine and imprisonment not to exceed six months. All prosecutions under this chapter shall be instituted by the corporation counsel or one of his assistsants in the Superior Court of the District of Columbia. (Mar. 3, 1921, 41 Stat. 1225, ch. 118, § 32; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 10–135. Jurisdiction over fish wharf and market—Leases, rentals, fees—Regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(200) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section regarding regulations for the control, regulation, and operation of the municipal fish wharf and market, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 10–137. Farmers' produce market—Regulations—Charges.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(201) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

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SHORT TITLE OF PUB. L. 91–358

The enacting clause of Pub. L. 91–358, provided: That this Act [consisting of the titles and sections enumerated in following table of contents] may be cited as the "District of Columbia Court Reform and Criminal Procedure Act of 1970".

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SHORT TITLE OF TITLE I OF PUB. L. 91–358

Sec. 101 of Pub. L. 91–358, provided: This title [consisting of sections 101 to 199 of this Act, amending generally title 11, chapter 23 of title 16 and making other amendments and enactments. See Table of Contents and Parallel Reference Tables] may be cited as the "District of Columbia Court Reorganization Act of 1970".

REVISION OF TITLE 11 OF THE DISTRICT OF COLUMBIA CODE

Section 111 of Act July 29, 1970, Pub. L. 91–358, amended title 11 of the D.C. Code to read as hereinafter set out. The original title 11, which this section revises and amends generally, was a part of section 1, of the Act of Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 478. The original title 11 consisted of twelve chapters, whereas the amended and revised title consists of fourteen chapters as above described. For the provisions of the original title 11 and as the same may have been previously amended, see the 1967 edition of the Code, together with Supplement III thereto.

APPLICABILITY OF AMENDMENTS MADE TO CERTAIN SECTIONS OF TITLE 43

Section 199(b)(6) of Pub. L. 91–358 provided: (6) The amendments made by subpart 2 of part D of this title (title I) to section 8 of the Act of March 4, 1913 [see, §§ 163(i) and 168 of Pub. L. 91–358], shall not apply with respect to proceedings brought in the United States District Court for the District of Columbia on or before the effective date of this title.

EFFECTIVE DATE OF TITLE I, DEFINED

Section 199(c) of Act July 29, 1970, Pub. L. 91–358, provided: (c) For purposes of this title and any amendment made by this title, the term "effective date of the District of Columbia Court Reorganization Act of 1970" means the first day of the seventh calendar month which begins after the date of the enactment of this Act.

EFFECTIVE DATE OF SECTIONS 195 AND 196 OF PUB L. 91–358

Section 199(b)(8) of Pub. L. 91–358, provided: (8) Sections 195 and 196 shall take effect on the date of the enactment of this Act. [July 29, 1970]

EFFECTIVE DATE OF AMENDMENT OF SECTION 1–1510

Section 199(b)(7) of Pub. L. 91–358, provided: (7) The amendments made by section 162 shall take effect with respect to petitions filed after the effective date of this title for review of decisions or orders.

EFFECTIVE DATE OF SECTION 11–722

Section 199(b)(5) of Pub. L. 91–358, provided: (5) Section 11–722 of the District of Columbia Code, as contained in the revision made by part A of this title, shall take effect with respect to petitions filed after the effective date of this title for review of decisions or orders.

EFFECTIVE DATES OF AMENDMENTS TO CERTAIN MISCELLANEOUS SECTIONS

Section 199(b)(3)(B) of Pub. L. 91–358 provided that certain amendments shall take effect as follows: (B) Immediately following the expiration of the thirty-month period beginning on such date [effective date of title I] in the case of amendments made by sections 144(10), 145(b)(2), 145(k)(1), 145(*l*), 147(1), 148(2), 149(2), 149(4), 149(6), and 150(a).

[The D.C. Code sections amended by the above enumerated sections of Pub. L. 91–358, are: 15–707, 16–516, 16–549, 16–2901, 16–2921, 16–3101, 16–3103, 16–3104, 16–3105, 16–3106, 18–101, 19–115, 20–312, 20–337, 20–501, 20–364, 20–1110, 21–112, 21–115, 21–158.]

EFFECTIVE DATES OF AMENDMENTS TO CERTAIN SECTIONS OF TITLE 21

Section 199(b)(3)(A) and part of (B) of Pub. L. 91–358 provided:

(3) The amendments made by the following sections of this title [title I] (relating to those matters over which the United States District Court for the District of Columbia retains temporary jurisdiction) shall take effec as follows:

(A) Immediately following the expiration of the eighteen-month period beginning on the effective date of this title in the case of amendments made by sections 150(b), 150(c)(1), 150 (c)(3), 150(c)(5)(A)(ii), 150(e), 150(f), 150(g)(3)(A), 150(g)(4), 150(g)(5), 150(g)(8), 150(h), and 150(i)(1).

[The D.C. Code sections amended by the above enumerated sections of Pub. L. 91–358 are: 21–301, 21–501, 21–502, 21–521, 21–544, 21–564, 21–581, 21–584, 21–590, 21–592, 21–706, 21–906, 21–1103, 21–1104, 21–1109, 21–1116, 21–1122, 21–1301, 21–1302, 21–1501.]

The amendments made by section 150 to chapter 5 of title 21 of the District of Columbia Code (relating to hospitalization of the mentally ill) shall not apply with

respect to any case pending before the United States District Court for the District of Columbia or the Commission on Mental Health at the expiration of such eighteen-month period.

EFFECTIVE DATE AND TEMPORARY CONTINUATION OF LAWS CONTAINED IN TITLE 11, CHAPTER 21 OF 1967 EDITION OF THE CODE

Section 199 of Pub. L. 91–358 provided in part: (a) The effective date of this title [title I] (and the amendments made by this title) shall be the first day of the seventh calendar month which begins after the date of the enactment of this Act. [July 29, 1970]

(b) Notwithstanding subsection (a), the following provisions shall take effect as provided in the following paragraphs:

(1) The provisions of chapter 25 (relating to attorneys) of title 11 of the District of Columbia Code, as contained in the revision made by part A of this title, shall take effect on April 1, 1972. The provisions of chapter 21 (relating to attorneys) of title 11 of the District of Columbia Code, in effect on the day before the effective date of this title, shall remain in effect until April 1, 1972; except that during the period beginning on the effective date of this title and ending April 1, 1972, section 11–2103 of such chapter is amended to read as follows:

"§ 11–2103. Disbarment by District Court upon conviction of crime

"When a member of the bar of the United States District Court for the District of Columbia is convicted of an offense involving moral turpitude, and a certified copy of the conviction is presented to the court, the court shall, pending final determination of an appeal from the conviction, suspend the member of the bar from practice. Upon reversal of the conviction the court may vacate or modify the suspension. If a final judgment of conviction is certified to the court, the name of the member of the bar so convicted shall be struck from the roll of the members of the bar and he shall thereafter cease to be a member. Upon the granting of a pardon to a member so convicted, the court may vacate or modify the order of disbarment."

EFFECTIVE DATES AND TEMPORARY CONTINUATION OF SECTIONS 11–504 THROUGH 11–506, AS SET OUT IN 1967 EDITION OF THE CODE

Section 199(b)(2) of Pub. L. 91–358, provided: (2) The provisions of chapter 21 (relating to the Register of Wills) of title 11 of the District of Columbia Code, as contained in the revision made by part A of this title, shall take effect immediately following the expiration of the thirty-month period beginning on the effective date of this title [title I]. The provisions of sections 11–504 through 11–506 of title 11 of the District of Columbia Code (relating to the Register of Wills), in effect on the day before the effective date of this title, shall remain in effect until the expiration of such thirty-month period. During such thirty-month period, the United States District Court for the District of Columbia shall fix the compensation of the Register of Wills without regard to chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code, but at a rate not exceeding the maximum rate authorized for G.S. 16 of the General Schedule.

APPLICABILITY OF REPEAL OF TITLE 17, CHAPTER 1, TO CERTAIN APPEALS

Section 199(b)(4) of Pub. L. 91–358, provided: (4) Section 146(a)(1) (relating to the repeal of certain review provisions) shall not apply with respect to any appeal from the District of Columbia Court of Appeals over which the United States Court of Appeals for the District of Columbia Circuit has jurisdiction under section 11–301 of title 11 of the District of Columbia Code as in effect immediately before the date of enactment of this Act.

REDESIGNATION OF COURTS

Section 155 (a) and (b) of Act July 29, 1970, Pub. L. 91–358, provided as follows:

SEC. 155. (a) Except as otherwise provided in this Act, all laws of the United States (other than this Act) applicable exclusively to the District of Columbia, in force on the effective date of this Act, in which reference is made to the—

(1) justice of the peace,
(2) justice of the peace court,
(3) police court of the District of Columbia,
(4) Municipal Court of the District of Columbia,
(5) Municipal Court for the District of Columbia (established by the Act of April 1, 1942 (56 Stat. 190)), and
(6) District of Columbia Court of General Sessions (established by the Act of July 8, 1963 (77 Stat. 77)) or any division or branch of that Court,

are amended by substituting "Superior Court of the District of Columbia" for each such reference.

(b) Except as otherwise provided in this Act, all laws of the United States (other than this Act) applicable exclusively to the District of Columbia, in force on the effective date of this Act, in which reference is made to the Municipal Court of Appeals for the District of Columbia (established by the Act of April 1, 1942), are amended by substituting "District of Columbia Court of Appeals" for such reference.

REFERENCES TO ABOLISHED AGENCIES AND OFFICES

Section 198 of Pub. L. 91–358, provided: Any reference in an amendment made by this title to an agency or office of the government of the District of Columbia, abolished by Reorganization Plan Number 5 of 1952 (D.C. Code, title 1, App.) is not to be construed as a reestablishment of that office or agency or as a change in the functions, powers, and duties of the Commissioner of the District of Columbia or of the District of Columbia Council.

EFFECTIVE DATES OF SPECIFIC PORTIONS OF PUB. L. 91–358

Section 901 of Act July 29, 1970, Pub. L. 91–358, provided:

(a) Except as provided in part E of title I [Relating to transition provisions, etc., consisting of sections 191 to 199 of the Act, set out as notes preceding § 11–101, notes to §§ 11–501, 11–901, 11–1101, 11–1501, 11–1561 and 47–2402] section 502 [Effective date of § 4–143a], and subsection (b) of this section, this Act and the amendments made by this Act [for classification of this Act, see Parallel Reference Tables] shall take effect on the first day of the seventh calendar month which begins after the date of its enactment. [July 29, 1970]

(b)(1) Title III [Sections 2–2221 to 2–2228 and repeal of former sections 2–2201 to 2–2210] shall take effect on the date of the enactment of this Act [July 29, 1970]. In the administration of section 303(b) of title III [2–2223 (b)] during the period beginning on the date of the enactment of this Act and ending on the effective date specified in subsection (a) [see above] the reference to the Superior Court of the District of Columbia shall be considered a reference to the District of Columbia Court of General Sessions.

(2) Titles IV [Sections 32–1101 to 32–1106] VI [Relating to Commission on Revision of Criminal Laws] VII [Federal Payments] and VIII [Sections 1–820 and 2–1117] shall take effect on the date of the enactment of this Act.

(3) The amendments made by sections 201 [22–104 and 22–104a] and 205 [22–3202 and 22–3213] of this Act shall apply with respect to any person who commits an offense after the effective date of this Act.

§ 11–101. Judicial power

The judicial power in the District of Columbia is vested in the following courts:

(1) The following Federal Courts established pursuant to article III of the Constitution:

(A) The Supreme Court of the United States.

(B) The United States Court of Appeals for the District of Columbia Circuit.

(C) The United States District Court for the District of Columbia.

(2) The following District of Columbia courts established pursuant to article I of the Constitution:

(A) The District of Columbia Court of Appeals.

(B) The Superior Court of the District of Columbia.

(July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 475.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–102. Status of District of Columbia Court of Appeals

The highest court of the District of Columbia is the District of Columbia Court of Appeals. Final judgments and decrees of the District of Columbia Court of Appeals are reviewable by the Supreme Court of the United States in accordance with section 1257 of title 28, United States Code. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 475.)

Chapter 3.—UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Sec.
11–301. Jurisdiction of appeals from the District of Columbia Court of Appeals.

§ 11–301. Jurisdiction of appeals from the District of Columbia Court of Appeals

In addition to its jurisdiction as a United States court of appeals and any other jurisdiction conferred on it by law, the United States Court of Appeals for the District of Columbia Circuit has jurisdiction of appeals from judgments of the District of Columbia Court of Appeals—

(1) with respect to violations of criminal laws of the United States which are not applicable exclusively to the District of Columbia if a petition for the allowance of an appeal from that judgment is filed within ten days after its entry; or

(2) entered before the effective date of the District of Columbia Court Reorganization Act of 1970 in any other case if a petition for the allowance of an appeal from that judgment is filed within ten days after its entry.

(July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 476.)

APPLICABILITY OF REPEAL OF TITLE 17 CHAPTER 1 TO CERTAIN APPEALS

Section 199(b)(4) of Pub. L. 91–358, provided: (4) Section 146(a)(1) (relating to the repeal of certain review provisions) shall not apply with respect to any appeal from the District of Columbia Court of Appeals over which the United States Court of Appeals for the District of Columbia Circuit has jurisdiction under section 11–301 of title 11 of the District of Columbia Code as in effect immediately before the date of enactment of this Act.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SALE OF REPORTS OF THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Section 403 of Act Oct. 21, 1970, Pub. L. 91–472, 84 Stat. 1058, provided: "The reports of the United States Court of Appeals for the District of Columbia shall not be sold for a price exceeding that approved by the court and for not more than $9.00 per volume." For similar provisions in prior acts, see section 11–341 and note thereto in the 1967 edition of the Code and Supplement III thereof.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also §11–321 in 1967 Edition]

Basis for review

Although a number of individuals will be affected by a decision of District of Columbia Court of Appeals that of itself is not enough to require United States Court of Appeals to exercise its discretion and review the decision; rather, the nature of the question presented and the soundness of the decision are the proper considerations. *N. Fields* v. *District of Columbia* (1968, 404 F. 2d 1323, 131 U.S. App. D.C. 347).

District of Columbia Court of Appeals' decision adjudging that petitioner, an optician, had unlawfully practiced optometry without a license by his unsupervised fitting of contact lenses was proper and United States Court of Appeals would not in its discretion review such decision. *Id.*

United States Court of Appeals is not required to review District of Columbia Court of Appeals decision when what is involved is interpretation of a local statute, regulation, or ordinance; the interpretation given is within the zone of what is reasonable; the prosecution is for an offense *malum prohibitum* that is brought by the District of Columbia and not by the United States; and the case does not involve overtones of fundamental rights or substantial allegations of executive action as *ultra vires* or overreaching. *Id.*

Pretrial production of grand jury testimony

District of Columbia Court of Appeals had authority to review a refusal by Court of General Sessions to certify that production of grand jury testimony would be appropriate and the United States Court of Appeals for the District of Columbia has jurisdiction to review a refusal by United States District Court for the District of Columbia to order production of grand jury testimony after receiving a certification from the Court of General Sessions. *W. H. Gibson* v. *United States* (1968, 403 F. 2d 166, 131 U.S. App. D.C. 143).

After a grand jury returned a no true bill and prosecutions were initiated in the Court of General Sessions for the District of Columbia by informations, defendant seeking pretrial production of grand jury testimony by complainant and other witnesses government planned to call at trial should first apply for a request or certification by Court of General Sessions before seeking to procure order from United States District Court for production of grand jury testimony. *Id.*

Review of judgments of Small Claims Court

That judgments rendered in the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions are for small sums should not bar appellate review when plain legal error has been committed. *A. Willis* v. *Retail Adjustment Bureau, Inc. etc.* (1967, 384 F. 2d 312, 127 U.S. App. D.C. 360).

Review of order denying leave to appeal

The United States Court of Appeals for the District of Columbia Circuit has jurisdiction to review the action of the District of Columbia Court of Appeals in refusing to allow an appeal to that court from judgment of Small Claims and Conciliation Branch of District of Columbia Court of General Sessions for unpaid rent, in view of the apparent error in the judgment for rent. *A. Willis* v. *Retail Adjustment Bureau, Inc. etc.* (1967, 384 F. 2d 312, 127 U.S. App. D.C. 360).

Chapter 5.—UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

SUBCHAPTER I.—JURISDICTION

Sec.
11–501. Civil jurisdiction.
11–502. Criminal jurisdiction.
11–503. Removal of cases from the Superior Court of the District of Columbia.

SUBCHAPTER II.—AUDITOR

11–521. Appointment of Auditor.

SUBCHAPTER I.—JURISDICTION

§ 11–501. Civil jurisdiction

In addition to its jurisdiction as a United States district court and any other jurisdiction conferred on it by law, the United States District Court for the District of Columbia has jurisdiction of the following:

(1) Any civil action or other matter begun in the court before the effective date of the District of Columbia Court Reorganization Act of 1970 other than any matter over which the Superior Court of the District of Columbia takes jurisdiction under section 11–921(a)(4)(G) or 11–921(a)(5)(B).

(2) During the eighteen-month period beginning on such effective date, any civil action or other matter which is brought under—

(A) chapter 3 of title 21 (relating to gifts to minors);

(B) chapter 5 of title 21 (relating to hospitalization of the mentally ill);

(C) chapter 7 of title 21 (relating to property of the mentally ill);

(D) chapter 11 of title 21 (relating to commitment and maintenance of substantially retarded persons);

(E) chapter 13 of title 21 (relating to appointment of committees for alcoholics and addicts); or

(F) chapter 15 of title 21 (relating to appointment of conservators).

(3) During the thirty-month period beginning on such effective date, any civil action or other matter—

(A) which is brought under chapter 29 of title 16 (relating to partition and assignment of dower);

(B) which would have been within the jurisdiction of the Orphans Court of Washington County, District of Columbia, before June 21, 1870;

(C) relating to the execution or validity of wills devising real property within the District of Columbia, and of wills and testaments properly presented for probate in the United States District Court for the District of Columbia, and the admission to probate and recording of those wills;

(D) relating to the proof of wills of either personal or real property and the revocation of probate of wills for cause;

(E) involving the granting and revocation for cause of letters testamentary, letters of administration, letters ad colligendum and letters of guardianship, and the appointment of successors to persons whose letters have been revoked.

(F) involving the hearing, examination, and issuance of decrees upon accounts, claims, and demands existing between executors or administrators and legatees or persons entitled to a distributive share of an interstate estate, or between wards and their guardians;

(G) involving the enforcement of the rendition of inventories and accounts by executors, administrators, collectors, guardians, and trustees required to account to the court,

(H) involving the enforcement of distribution of estates by executors and administrators and the payment or delivery by guardians of money or property belonging to their wards; or

(I) otherwise within the probate jurisdiction of the court on the day before such effective date.

(4) Any civil action (other than a matter over which the Superior Court of the District of Columbia has jurisdiction under paragraph (3) or (4) of section 11–921(a)) begun in the court during the thirty-month period beginning on such effective date wherein the amount in controversy exceeds $50,000. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 476.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

ASSIGNMENT OF UNITED STATES JUDGES TO SUPERIOR COURT DURING TRANSITION PERIOD

Section 197 of Pub. L. 91–358, provided: With respect to the assignments of district judges to the Superior Court of the District of Columbia under subsection (c) of section 292 of title 28, United States Code, as amended by section 172(e) of this Act, during the thirty-month period following the effective date of this title, the approval of the Attorney General of the United States shall not be required.

TRANSFER OF FILES, RECORDS AND PROPERTY

Section 191(b) of Pub. L. 91–358 provided:

(b) The files, records, and property of the United States District Court for the District of Columbia with respect to its jurisdiction on the day before the effective date of this title under—

(1) chapters 5, 7, 11, 13, and 15 of title 21, respectively of the District of Columbia Code, as in effect on such day, shall be transferred to the Superior Court of the District of Columbia not later than forty-five days after the Superior Court takes jurisdiction under section 11–921(a)(4) of title 11 of the District of Columbia Code (as contained in the revision made by part A of this title) of actions or other matters brought under such chapters, as determined jointly by the chief judges of the United States District Court for the District of Columbia and the Superior Court after consultation with the Executive Officer of the District of Columbia courts; and

(2) section 11–522 of title 11 and chapter 29 of title 16 of the District of Columbia Code as in effect on such day, shall be transferred to the Superior Court of the District of Columbia not later than forty-five days after the Superior Court takes jurisdiction under section 11–921(a)(5) of title 11 of the District of Columbia Code (as contained in the revision made by part A of this title) of actions or other matters brought under such provisions, as determined jointly by the chief judges of the United States District Court for the District of Columbia and the Superior Court, after consultation with the Executive Officer of the District of Columbia courts and the Register of Wills.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1–921, 11–921.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 11–521 in 1967 Edition]

Declaratory judgment

In this action by a nonprofit corporation comprised of tenants of high rise and town house projects and individual tenants seeking to restrain owners and managers of projects from requiring tenants to agree to exculpatory clause to obtain use of swimming pools an actual case or controversy was presented and was an appropriate occasion for granting declaratory and injunctive relief. *Tenants Council of Tiber Island-Carrollsburg Square et al.* v. *G. W. DeFranceaux, et al.* (1969, 305 F. Supp. 560).

Equality of district and General Session Courts

Federal district court is not "superior" to District of Columbia Court of General Sessions, *B. R. Burrell* v. *United States* (D.C. App. 1969, 252 A. 2d 897).

Federal jurisdiction

The District Court for District of Columbia has jurisdiction to entertain complaint which raised objections to manner in which defendants were administering the Food Stamp Act, the commodities distribution program and the Agriculture Act since under the D.C. Code such court has general equity jurisdiction, and venue where either party is resident or found within the District of Columbia which permits actions for declaratory judgment as well as injunction to be maintained against those whose office in the federal government establishes their official residence in the District. *A. Peoples et al.* v. *U.S. Department of Agriculture et al.* (1970, 427 F. 2d 561, — U.S. App. D.C. —).

Plaintiff, who brought suit in the United States District Court for the District of Columbia, alleged in his amended complaint that the Court had jurisdiction under the District of Columbia Code, and did not allege jurisdiction under any federal statute, it was nevertheless appropriate for the court to inquire whether there was such federal jurisdiction. *M. W. Rice* v. *Disabled American Veterans* (1968, 295 F. Supp. 131).

Local jurisdiction

Where jurisdiction is alleged under the District Code all aspects of local jurisdiction, including venue, are governed by local statute and the federal venue statute has no application. *M. W. Rice* v. *Disabled American Veterans* (1968, 295 F. Supp. 131).

All aspects of local jurisdiction are governed by local statute. *S. Vogel and S. & H. Vogel* v. *Tenneco Oil Company etc.* (1967, 276 F. Supp. 1008).

Federal venue statute has no application where jurisdiction is alleged under provisions of District of Columbia Code. *Id.*

Allegation of complaint that corporation was transacting business in District of Columbia and admission of corporation that it was licensed to do business in District of Columbia were sufficient to establish court's local jurisdiction. *Id.*

Moot question

A controversy resulting in a suit by nonprofit corporation comprised of tenants of high rise and town house projects and individual tenants which seeks to restrain owners and managers of projects from requiring tenants to agree to exculpatory clause to obtain use of swimming pools was not rendered moot by close of swimming season where similar exculpatory clauses had regularly been employed by defendants in the past. *Tenants Council of Tiber Island-Carrollsburg Square et al.* v. *G. W. DeFranceaux, et al.* (1969, 305 F. Supp. 560).

Title to property

There is no restriction upon district court, sitting in probate, which limits its power to adjudicate right to possession of personality. *C. M. Price and G. P. Marshall, Jr., etc.* v. *E. B. Williams et al.* (1968, 393 F. 2d 348, 129 U.S. App. D.C. 239).

Venue

In this case, personal jurisdiction over Missouri and Maryland selective service officials was established in District of Columbia when, without objecting, they entered general appearance through United States attorney in action by second year graduate student for I–S deferment and, in view of fact that venue in the District also lay as against Director of Selective Service System, District of Columbia was proper forum. *J. R. Nestor* v. *L. B. Hershey et al.* (1969, 425 F. 2d 504—U.S. App. D.C.—).

In this case the court found that defendant college accreditation association had contacts with District of Columbia sufficient in nature and degree, under Clayton Act and under statutes relating to venue of suits against corporations, to permit laying venue in District of Columbia for action under antitrust laws and for injunction against excluding plaintiff's college from membership, where the defendant accredited a number of schools in District and regularly visited them and had other regular communications and visits. *Marjorie Webster Junior College Inc.* v. *Middle States Association of Colleges and Secondary Schools, Inc.* (1969, 302 F. Supp. 459).

Inasmuch as the relevant federal venue statute provides that an action may be transferred only to a district "where it might have been brought", and where action brought under the local jurisdictional statute of the District of Columbia could not have been brought in any federal district court other than the one in the District of Columbia, there was no federal district court in the country to which such action might be transferred under the federal venue statute. *M. W. Rice* v. *Disabled American Veterans* (1968, 295 F. Supp. 131).

§ 11–502. Criminal jurisdiction

In addition to its jurisdiction as a United States district court and any other jurisdiction conferred on it by law, the United States District Court for the District of Columbia has jurisdiction of the following:

(1) Any criminal case begun in the court by the return of an indictment or the filing of an information before the effective date of the District of Columbia Court Reorganization Act of 1970.

(2) Any criminal case which is begun in the court by the return of an indictment or the filing of an information during the eighteen-month period beginning on such effective date and which—

(A) involves a violation of any one of the following sections of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901:

(i) section 809 (D.C. Code, sec. 22–201) (relating to abortion),

(ii) section 803 (D.C. Code, sec. 22–501) (relating to assault with intent to kill, rob, rape, or poison),

(iii) section 823(a) (D.C. Code, sec. 22–1801 (a)) (relating to burglary in the first degree),

(iv) section 812 (D.C. Code, sec. 22–2101) (relating to kidnaping),

(v) sections 798 through 802 (D.C. Code, secs, 22–2401 through 22–2405) (relating to murder and manslaughter),

(vi) section 808 (D.C. Code, sec. 22–2801) (relating to rape),

(vii) section 810 (D.C. Code, sec. 22–2901) (relating to robbery); or

(B) involves any other offense under any law applicable exclusively to the District of Columbia which offense is joined in such information or indictment with any of the offenses listed in subparagraph (A).

(3) Any offense under any law applicable exclusively to the District of Columbia which offense is joined in the same information or indictment with any Federal offense. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 477.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–923, 23–311.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 11–521 in 1967 Edition]

Ruling of district court as binding on Court of General Sessions

United States district court decision, in prosecution for narcotics violation, which suppressed certain evidence as products of illegal search and seizure was not binding on District of Columbia Court of General Sessions, where defendant was charged with possession of prohibited weapon and possession of numbers slips, and which had held previously to United States District Court ruling that certain evidence, which was seized under same circum-

stances as evidence in federal prosecution, was admissible. *B. R. Burrell* v. *United States* (D.C. App. 1969, 252 A. 2d 897).

§ 11–503. Removal of cases from the Superior Court of the District of Columbia

A civil action or criminal prosecution in the Superior Court of the District of Columbia is removable to the United States District Court for the District of Columbia in accordance with chapter 89 of title 28, United States Code. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 478.)

SUBCHAPTER II.—AUDITOR

§ 11–521. Appointment of Auditor

For so long as the business of the court may require, the United States District Court for the District of Columbia may appoint an Auditor for the court. (July 29, 1970, Pub. L. 91-358, § 111, title I, 84 Stat. 478.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 7.—DISTRICT OF COLUMBIA COURT OF APPEALS

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

Sec.

11–701. Continuation of court; court of record; seal.
11–702. Composition.
11–703. Judges; service; compensation.
11–704. Oath of judges.
11–705. Assignment of judges; divisions; hearings.
11–706. Absence, disability, or disqualification of judges; vacancies; quorum.
11–707. Assignment of judges to and from Superior Court.
11–708. Clerks and secretaries for judges.
11–709. Reports.

SUBCHAPTER II.—JURISDICTION

11–721. Orders and judgments of the Superior Court.
11–722. Administrative orders and decisions.

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

11–741. Contempt powers.
11–742. Oaths, affirmations, and acknowledgements.
11–743. Rules of court.

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

§ 11–701. Continuation of court; court of record; seal

(a) The District of Columbia Court of Appeals (hereafter in this subchapter referred to as the "court") shall continue as a court of record in the District of Columbia.

(b) The court shall have a seal. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 478.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–702. Composition

The court shall consist of a chief judge and eight associate judges. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 478.)

§ 11–703. Judges; service; compensation

(a) The chief judge and the judges of the court shall serve in accordance with chapter 15 of this title.

(b) Judges of the court shall be compensated at 90 per centum of the rate prescribed by law for judges of the United States courts of appeals. The chief judge, during his service in that position, shall receive an additional $500 per annum. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 479.)

AMENDMENT OF FORMER SECTION

1970—Section 6(a), Act Apr. 15, 1970, Pub. L. 91–231, amended former sec. 11–702(d) by increasing the salary of the chief judge from $29,000 to $36,500 and each associate judge from $28,500 to $36,000.

§ 11–704. Oath of judges

Each judge, when appointed, shall take the oath prescribed for judges of courts of the United States. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 479.)

§ 11–705. Assignment of judges; divisions; hearings

(a) Judges of the court shall sit on the court and its divisions in such order and at such times as the court directs.

(b) Cases and controversies shall be heard and determined by divisions of the court unless a hearing or a rehearing before the court in banc is ordered. Each division of the court shall consist of three judges.

(c) A hearing before the court in banc may be ordered by a majority of the judges of the court in regular active service. The court in banc for a hearing shall consist of the judges of the court in regular active service.

(d) A rehearing before the court in banc may be ordered by a majority of the judges of the court in regular active service. The court in banc for a rehearing shall consist of the judges of the court in regular active service, except that a retired judge may sit as a judge of the court in banc in the rehearing of a case or controversy if he sat on the court or a division of the court at the original hearing thereof. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 479.)

§ 11–706. Absence, disability, or disqualification of judges; vacancies; quorum

(a) When the chief judge of the court is absent or disabled, his duties shall devolve upon and be performed by such associate judge as the chief judge may designate in writing. In the event that the chief judge is (1) disqualified or suspended, or (2) unable or fails to make such a designation, his duties shall devolve upon and be performed by the associate judges of the court according to the seniority of their original commissions.

(b) A chief judge whose term as chief judge has expired shall continue to serve until redesignated or until his successor has been designated. When there is a vacancy in the position of chief judge, the position shall be filled temporarily as provided in subsection (a).

(c) Two judges shall constitute a quorum of a division of the court, and six judges shall constitute a quorum of the court sitting in banc. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 479.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–707. Assignment of judges to and from Superior Court

(a) The chief judge of the District of Columbia Court of Appeals may designate and assign temporarily one or more judges of the Superior Court of the District of Columbia to serve on the District of Columbia Court of Appeals or a division thereof whenever the business of the District of Columbia Court of Appeals so requires. Such designations or assignments shall be in conformity with the rules or orders of the District of Columbia Court of Appeals.

(b) Upon presentation of a certificate of necessity by the chief judge of the Superior Court of the District of Columbia, the chief judge of the District of Columbia Court of Appeals may designate and assign temporarily one or more judges of the District of Columbia Court of Appeals to serve as a judge of the Superior Court of the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 479.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–908.

§ 11–708. Clerks and secretaries for judges

Each judge may appoint and remove a personal secretary. The chief judge may appoint and remove two personal law clerks, and each associate judge may appoint and remove a personal law clerk. In addition, the chief judge may appoint and remove not more than three law clerks for the court. The law clerks appointed for the court shall serve as directed by the chief judge. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 480.)

§ 11–709. Reports

Each judge shall submit to the chief judge such reports and data as the chief judge may request. Each judge shall submit a monthly written report to the chief judge and the Commission on Judicial Disabilities and Tenure which shall be in a form prescribed by the chief judge after consultation with the Commission and which shall set forth the following:

(1) The number of days' attendance in court of the judge during the month covered.

(2) The division of the court which he attended.

(3) The number of hours per day of his attendance.

(4) The number and type of matters disposed of by the judge during the month covered.

(5) Such other data as the chief judge may require.

(July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 480.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1730.

SUBCHAPTER II.—JURISDICTION

§ 11–721. Orders and judgments of the Superior Court

(a) The District of Columbia Court of Appeals has jurisdiction of appeals from—

(1) all final orders and judgments of the Superior Court of the District of Columbia;

(2) interlocutory orders of the Superior Court of the District of Columbia—

(A) granting, continuing, modifying, refusing, or dissolving or refusing to dissolve or modify injunctions;

(B) appointing receivers, guardians, or conservators or refusing to wind up receiverships, guardianships, or the administration of conservators or to take steps to accomplish the purpose thereof; or

(C) changing or affecting the possession of property; and

(3) orders or rulings of the Superior Court of the District of Columbia appealed by the United States or the District of Columbia pursuant to section 23–104 or 23–111(d)(2).

(b) Except as provided in subsection (c) of this section, a party aggrieved by an order or judgment specified in subsection (a) of this section, may appeal therefrom as of right to the District of Columbia Court of Appeals.

(c) Review of judgments of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia and of judgments in the Criminal Division of that court where the penalty imposed is a fine of less than $50 for an offense punishable by imprisonment of one year or less, or by fine of not more than $1,000, or both, shall be by application for the allowance of an appeal, filed in the District of Columbia Court of Appeals.

(d) When a judge of the Superior Court of the District of Columbia in making in a civil case (other than a case in which a child, as defined in section 16–2301, is alleged to be delinquent, neglected, or in need of supervision) a ruling or order not otherwise appealable under this section, shall be of the opinion that the ruling or order involves a controlling question of law as to which there is substantial ground for a difference of opinion and that an immediate appeal from the ruling or order may materially advance the ultimate termination of the litigation or case, he shall so state in writing in the ruling or order. The District of Columbia Court of Appeals may thereupon, in its discretion, permit an appeal to be taken from that ruling or order, if application is made to it within ten days after the issuance or entry of the ruling or order. An application for an appeal under this subsection shall not stay proceedings in the Superior Court of the District of Columbia unless the judge of that court who made such ruling or order or the District of Columbia Court of Appeals or a judge thereof shall so order.

(e) On the hearing of any appeal in any case, the District of Columbia Court of Appeals shall give judgment after an examination of the record without regard to errors or defects which do not affect the substantial rights of the parties. (July 29, 1970, Pub. L. 91–358, §111, title I, 84 Stat. 480.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 17–307.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 11–741 in 1967 Edition]

Appealable orders

An order of the juvenile court denying petitioner, who was under indictment for murder in federal district court, access to certain records of juvenile court pertaining to potential witness in petitioner's prosecution is not final, and District of Columbia Court of Appeals is without jurisdiction to review order. *In re P. E. Poston* (D.C. App. 1970, 263 A. 2d 254).

An order which denies a motion to quash an attachment is not final and hence not generally appealable, unless possession of property is changed or affected. *G. F. Ludington et ano.* v. *Bogdonoff* (D.C. App. 1969, 256 A. 2d 921).

In this case possession of property was not affected by the denial of intervenors' motion to quash attachment, and appeal from order denying motion was premature and District of Columbia Court of Appeals was without jurisdiction of appeal. *Id.*

Jurisdiction to issue extraordinary writs

The District of Columbia Court of Appeals has appellate jurisdiction over final orders of the Court of General Sessions, and orders prohibiting dissemination of arrest records, placing an immediate restraint on public officials, are final and thus appealable, thus in the future the only question will be the appropriate scope of the order in each particular case and mandamus and prohibition will not be proper to challenge the scope of the order. *D. Morrow* v. *District of Columbia and In re Alexander, Judge, etc.* (1969, 417 F. 2d 728, 135 U.S. App. D.C. 160, rev'g and remanding 243 A. 2d 901).

Juvenile Court appeals

Determinations of the Juvenile Court are not immune from overview as Congress has provided for appeals to the District of Columbia Court of Appeals, *E. Creek, Jr.* v. *W. J. Stone* (1967, 379 F. 2d 106, 126 U.S. App. D.C. 329).

Review of judgments of Small Claims Court

That judgments rendered in the Small Claims and Conciliation Branch of the District of Columbia Court of General Sessions are for small sums should not bar appellate review when plain legal error has been committed. *A. Willis* v. *Retail Adjustment Bureau, Inc., etc.* (1967, 384 F. 2d 312, 127 U.S. App. D.C. 360).

Review of order denying leave to appeal

The United States Court of Appeals for the District of Columbia Circuit has jurisdiction to review the action of the District of Columbia Court of Appeals in refusing to allow an appeal to that court from judgment of Small Claims and Conciliation Branch of District of Columbia Court of General Sessions for unpaid rent, in view of the apparent error in the judgment for rent. *A. Willis* v. *Retail Adjustment Bureau, Inc., etc.* (1967, 384 F. 2d 312, 127 U.S. App. D.C. 360).

§ 11–722. Administrative orders and decisions

The District of Columbia Court of Appeals has jurisdiction (1) except as provided in clause (2), to review orders and decisions of the Commissioner of the District of Columbia, the District of Columbia Council, any agency of the District of Columbia (including the Board of Zoning Adjustment of the District of Columbia and the Zoning Commission of the District of Columbia), and the District of Columbia Redevelopment Land Agency, in accordance with the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501—1–1510); and (2) to review orders and decisions of the Public Service Commission of the District of Columbia in accordance with section 8 of the Act of March 4, 1913 (D.C. Code, chapters 1 through 10, title 43). (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 481.)

EFFECTIVE DATE OF SECTION 11–722

Section 199(b)(5) of Pub. L. 91–358, provided: "(5) Section 11–722 of the District of Columbia Code, as contained in the revision made by part A of this title [Title I of Pub. L. 91–358], shall take effect with respect to petitions filed after the effective date of this title [Title I] for review of decisions or orders." For effective date of Title I of Pub. L. 91–358, see note preceding sec. 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 17–303, 17–307.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 11–742 in 1967 Edition]

Administrative action

Mere fact that proof tended to reveal at a suspension hearing before permit control officer of District of Columbia Department of Motor Vehicles that 17-year-old driver whose license was suspended, was driving while under influence of alcohol did not thereby convert the proceedings, administrative in character, into a judicial proceeding of the kind Congress assigned exclusively to juvenile court. *K. P. Murphy, a minor, etc.* v. *W. D. Heath, Director, etc.* (D.C. App. 1969, 256 A. 2d 421).

The court held that the exclusive jurisdiction in judicial proceedings conferred by Juvenile Court Act on the juvenile court is not a jurisdictional bar to the administrative action of suspending motor vehicle operator's permit of 17-year-old driver. *Id.*

Evidence—Admissibility

Testimony given in administrative suspension hearing of arresting officer that he and juvenile officer were responsible for seizing juvenile driver's permit and turning it over to Department of Motor Vehicles along with facts relative to the incident, was not product of a disclosure or use of information concerning a juvenile before the court, directly or indirectly derived from record, papers, files, or communications of the court, or acquired in the course of official duties. *K. P. Murphy, a minor, etc.* v. *W. D. Heath , Director, etc.* (D.C. App. 1969, 256 A. 2d 421).

Testimony of arresting officer, in administrative suspension hearing indicating, in response to permit control officer's question, that driver refused to take urine test was not of sufficient magnitude to fatally infect the fairness of the hearing in view of testimony as to odoriferous condition of driver's automobile and driver, his unsteady condition, and his unchallenged admission that he had earlier consumed substantial quantity of beer. *Id.*

—— Sufficiency

There was substantial evidence to support the order of permit control officer of the Department of Motor Vehicles suspending motor vehicle operator's permit for driving motor vehicle in reckless manner while under influence of intoxicating liquors. *K. P. Murphy, a minor, etc.* v. *W. D. Heath, Director, etc.* (D.C. App. 1969, 256 A. 2d 421).

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

§ 11–741. Contempt powers

In addition to the powers conferred by section 402 of title 18, United States Code, the District of Columbia Court of Appeals, or a judge thereof, may punish for disobedience of an order or for contempt committed in the presence of the court. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 481.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–742. Oaths, affirmations, and acknowledgments

Each judge of the District of Columbia Court of Appeals and each employee of the court authorized by the chief judge may administer oaths and affirmations and take acknowledgments. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 481.)

§ 11–743. Rules of court

The District of Columbia Court of Appeals shall conduct its business according to the Federal Rules of Appellate Procedure unless the court prescribes or adopts modifications of those Rules. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 481.)

Chapter 9.—SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

Sec.
11–901. Continuation of courts; court of record; seal.
11–902. Organization of the court.
11–903. Composition.
11–904. Judges; service; compensation.
11–905. Oath of judges.
11–906. Administration by chief judge; discharge of duties.
11–907. Absence, disability, or disqualification of chief judge.
11–908. Designation and assignment of judges.
11–909. Meetings and reports.
11–910. Clerks and secretaries for judges.

SUBCHAPTER II.—JURISDICTION

11–921. Civil jurisdiction.
11–922. Transfer of civil actions to Superior Court.
11–923. Criminal jurisdiction; commitment.

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

11–941. Issuance of warrants; record.
11–942. Subpenas.
11–943. Process.
11–944. Contempt power.
11–945. Oaths, affirmations, and acknowledgments.
11–946. Rules of court.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 11–1702.

SUBCHAPTER I.—CONTINUATION AND ORGANIZATION

§ 11–901. Continuation of courts; court of record; seal

The District of Columbia Court of General Sessions, the Juvenile Court of the District of Columbia, and the District of Columbia Tax Court are consolidated in a single court to be known as the Superior Court of the District of Columbia (hereafter in this title referred to as the "Superior Court"). The Superior Court shall be a court of record in the District of Columbia and shall have a single seal. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 482.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF EXISTING RECORDS, FILES, PROPERTY, AND FUNDS

Section 191(a) of Pub. L. 91–358 provided: The files, records, property, and unexpended balances of appropriations and other funds of the former District of Columbia Court of General Sessions, the Juvenile Court of the District of Columbia, and the District of Columbia Tax Court are transferred to the Superior Court of the District of Columbia.

TRANSFER OF EXISTING PERSONNEL

Section 192 of Pub. L. 91–358, provided:

(a)(1) The personnel of the former District of Columbia Court of General Sessions, the Juvenile Court of the District of Columbia, and the District of Columbia Tax Court shall be transferred to the Superior Court of the District of Columbia and shall, with respect to all rights, privileges, and benefits, be considered as continuous employees of that court without break in service.

(2)(A) Except as provided in subparagraph (B), personnel of the United States District Court for the District of Columbia who the Director of the Office of Management and Budget determines are, as a substantial part of their duties, performing functions incident to jurisdiction transferred under this title to the Superior Court shall be entitled to transfer to the Superior Court, and upon such transfer shall retain all of their rights, privileges, and benefits, and shall be considered as continuous employees of the Superior Court without break in service.

(B) The individual holding the office of Register of Wills under the United States District Court for the District of Columbia on the day before the date the Superior Court takes jurisdiction of probate actions and related matters under section 11–921(a)(5) of title 11 of the District of Columbia Code, as contained in the revision made by part A of this title, shall continue in office as the Register of Wills under the Probate Division of the Superior Court until his successor has been selected by that court under section 11–2102 of title 11 of the District of Columbia Code, as contained in the revision made by part A of this title, and shall retain all of his rights, privileges, and benefits and shall be considered as a continuous employee of the Superior Court. If the individual serving as the Auditor of the United States District Court for the District of Columbia is appointed to serve as the Auditor-Master of the Superior Court, he shall retain all of his rights, privileges, and benefits, and shall be considered as a continuous employee of the Superior Court without break in service.

(b) Nothing in this title shall affect the status of persons in the competitive civil service on the date of enactment of this title, but such persons may be assigned within the District of Columbia court system without regard to such status.

§ 11–902. Organization of the court

The Superior Court shall consist of the following divisions: Civil Division, Criminal Division, Family Division, Probate Division, and Tax Division. The divisions of the Superior Court may be divided into such branches as the Superior Court may by rule prescribe. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 482.)

§ 11–903. Composition

The Superior Court shall consist of a chief judge and forty-three associate judges (seven of whom shall not be appointed until twelve months after the effective date of the District of Columbia Court Reorganization Act of 1970). (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 482.)

§ 11–904. Judges; service; compensation

(a) The chief judge and the judges of the Superior Court shall serve as provided in chapter 15 of this title.

(b) Judges of the Superior Court shall be compensated at 90 per centum of the rate prescribed by law for judges of United States district courts. The chief judge, during his service in that position, shall receive an additional $500 per annum. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 482.)

AMENDMENT OF FORMER SECTION

1970—Section 6(b), act Apr. 15, 1970, Pub. L. 91–231, amended former sec. 11–902(d) by increasing the salary of the chief judge to $34,500 and each associate judge to $34,000.

§ 11–905. Oath of judges

Each judge of the Superior Court, when appointed shall take the oath prescribed for judges of courts of

the United States. (July 29, 1970, Pub. L. 91–358. § 111, title I, 84 Stat. 482.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–906. Administration by chief judge; discharge of duties

(a) The chief judge shall administer and superintend the business of the Superior Court, as provided in chapter 17 of this title. He shall give his attention to the discharge of the duties especially pertaining to his office and to the performance of such additional judicial work as he is able to perform.

(b) He shall, insofar as is consistent with this title, arrange and divide the business of the Superior Court and fix the time of sessions of the various divisions and branches of the Superior Court. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 483.)

§ 11–907. Absence, disability, or disqualification of chief judge

(a) When the chief judge of the court is absent or disabled, his duties shall devolve upon and be performed by such associate judge as the chief judge may designate in writing. In the event that the chief judge is (1) disqualified or suspended, or (2) unable or fails to make such a designation, his duties shall devolve upon and be performed by the associate judges of the court according to the seniority of their original commissions.

(b) A chief judge whose term as chief judge has expired shall continue to serve until redesignated or until his successor has been designated. When there is a vacancy in the position of chief judge, the position shall be filled temporarily as provided in subsection (a). (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 483.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–908. Designation and assignment of judges

(a) The chief judge may designate the number of judges to serve in any division and branch of the Superior Court and may assign and reassign any judge to sit in any division or branch. When making assignments to the Family Division and Tax Division, the chief judge shall consider the qualifications and interest of the judges. Each associate judge shall attend and serve in the division and branch to which he is assigned.

(b) When the business of the Superior Court requires, the chief judge may certify to the chief judge of the District of Columbia Court of Appeals the need for temporary assignment of an additional judge or judges as provided in section 11–707.

(c) Upon presentation of a certificate of necessity by the chief judge of the Superior Court, the chief judge of the United States Court of Appeals for the District of Columbia Circuit may designate and assign temporarily a judge or judges as provided in subsection (c) of section 292 of title 28, United States Code. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 483.)

§ 11–909. Meetings and reports

(a) The judges of the Superior Court shall meet upon the call of the chief judge, but not less than once each month, to consider matters relating to the business and operations of the court. The court may by rule require additional meetings.

(b) Each associate judge shall submit to the chief judge such reports and data as the chief judge may request. Each judge shall submit a monthly written report to the chief judge and the Commission on Judicial Disabilities and Tenure which shall be in a form prescribed by the chief judge after consultation with the Commission and which shall set forth the duties performed by the reporting judge as follows:

(1) The number of days' attendance in court of the judge during the month covered.

(2) The division and branch (if any) of the court which he attended.

(3) The number of hours per day of his attendance.

(4) The number and type of matters disposed of by the judge during the months covered.

(5) Such other data as the chief judge may require. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 483.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1730.

§ 11–910. Clerks and secretaries for judges

Each judge of the Superior Court may appoint and remove a personal law clerk and a personal secretary. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 484.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SUBCHAPTER II.—JURISDICTION

§ 11–921. Civil jurisdiction

(a) Except as provided in subsection (b), the Superior Court has jurisdiction of any civil action or other matter (at law or in equity) brought in the District of Columbia. Such jurisdiction shall vest in the court as follows:

(1) Beginning on the effective date of the District of Columbia Court Reorganization Act of 1970, the court has jurisdiction of any civil action or other matter begun before such effective date in the District of Columbia Court of General Sessions, the Juvenile Court of the District of Columbia, or the District of Columbia Tax Court.

(2) Beginning on such effective date, the court has jurisdiction of any civil action or other matter, at law or in equity, which is begun in the Superior Court on or after such effective date and in which the amount in controversy does not exceed $50,000.

(3) Beginning on such effective date, the court has jurisdiction (regardless of the amount in controversy) of any civil action or other matter, at law or in equity, which—

(A) is brought under—

(i) subchapter I of chapter 11 of title 16 (relating to ejectment);

(ii) subchapter II or III of chapter 13 of title 16 (relating to the condemnation of land on behalf of the District of Columbia);

(iii) chapter 19 of title 16 (relating to writs of habeas corpus directed to persons other than Federal officers and employees);

(iv) chapter 25 of title 16 (relating to change of name);

(v) chapter 33 of title 16 (relating to quieting title to real property);

(vi) subchapter II of chapter 35 of title 16 (relating to writ of quo warranto);

(vii) chapter 37 of title 16 (relating to replevin of personal property);

(viii) the Hospital Treatment for Drug Addicts Act for the District of Columbia (D.C. Code, secs. 24–601 through 24–611) (relating to commitment of narcotics users); or

(ix) section 2 of the Act of August 3, 1968 (D.C. Code, sec. 1–804b) (relating to contractors bonds).

(B) chapter 5 of title 21 (relating to hos- review of any assessment of tax (or civil penalty thereon) made by the District of Columbia; or

(C) chapter 7 of title 21 (relating to property

(4) Immediately following the expiration of the eighteen-month period beginning on such effective date, the court has jurisdiction (regardless of the amount in controversy) of any civil action or other matter, at law or in equity, brought under—

(A) chapter 3 of title 21 (relating to gifts to minors);

(B) chapter 5 of title 21 (relating to hospitalization of the mentally ill);

(C) chapter 7 of title 21 (relating to property of the mentally ill);

(D) chapter 11 of title 21 (relating to commitment and maintenance of substantially retarded persons);

(E) chapter 13 of title 21 (relating to appointment of committees for alcoholics and addicts);

(F) chapter 15 of title 21 (relating to appointment of conservators); or

(G) chapter 3, 7, 11, 13, or 15 of title 21 in the United States District Court for the District of Columbia and not completed in that court before the expiration of such eighteen-month period.

(5) Immediately following the expiration of the thirty-month period beginning on such effective date, the court has jurisdiction (regardless of the amount in controversy)—

(A) of any matter (at law or in equity)—

(i) brought under chapter 29 of title 16 (relating to partition of property and assignment of dower);

(ii) which would have been within the jurisdiction of the Orphans Court of Washington County, District of Columbia before June 21, 1870;

(iii) relating to the execution or validity of wills devising real property within the District of Columbia, and of wills and testaments properly presented for probate in the court, and the admission to probate and recording of those wills;

(iv) relating to the proof of wills of either personal or real property and the revocation of probate of wills for cause;

(v) involving the granting and revocation for cause of letters testamentary, letters of administration, letters ad colligendum and letters of guardianship, and the appointment of successors to persons whose letters have been revoked;

(vi) involving the hearing, examination, and issuance of decrees upon accounts, claims, and demands existing between executors or administrators and legatees or persons entitled to a distributive share of an intestate estate, or between wards and their guardians;

(vii) involving the enforcement of the rendition of inventories and accounts by executors, administrators, collectors, guardians, and trustees required to account to the court;

(viii) involving the enforcement of distribution of estates by executors and administrators and the payment or delivery by guardians of money or property belonging to their wards; or

(ix) otherwise within the probate jurisdiction of the United States District Court for the District of Columbia on the day before such effective date; and

(B) any matter (at law or in equity) described in subparagraph (A) which was begun in the United States District Court for the District of Columbia and not completed in that court before the expiration of such thirty-month period.

(6) Immediately following the expiration of the thirty-month period beginning on such effective date, the court has jurisdiction (regardless of the amount in controversy) of any civil action or other matter, at law or in equity, brought in the District of Columbia.

(b) The Superior Court does not have jurisdiction over any civil action or other matter (1) over which exclusive jurisdiction is vested in a Federal court in the District of Columbia, or (2) over which jurisdiction is vested in the United States District Court for the District of Columbia under section 11–501 (relating to civil actions or other matters begun in such court before the expiration of the thirty-month period beginning on the effective date of the District of Columbia Court Reorganization Act of 1970). (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 484; Dec. 7, 1970, Pub. L. 91–530, § 2(a)(1), 84 Stat. 1390.)

AMENDMENT

1970—Section 2(a)(1) of act Dec. 7, 1970, Pub. L. 91–530, amended subsec. (a)(3)(A)(ix) by striking out "sec. 1–804 (b)" and inserting in lieu thereof "sec. 1–804b".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–530

Section 2(d) of act Dec. 7, 1970, Pub. L. 91–530, provided: "The amendments made by subsections (a) and (c) of this section [amending sections 11–921(a)(3)(A)(ix), 11–1101(8)(16), 11–1501(b)(4), 11–1561(5)(6), 11–1742(a), and 23–551] shall take effect on the first day of the seventh calendar month which begins after the date of the enactment of the Act of July 29, 1970 (84 Stat. 473)."

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1–921, 11–501.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 11–961 in 1967 Edition]

Amount claimed

Nunc pro tunc refusal to amend pleading so as to confer jurisdiction upon the court was not improper in view of fact that answer to the complaint set out court's lack of jurisdiction as a separate defense, and case was properly dismissed on jurisdictional ground. *D. Fox* v. *Shannon & Luchs Company of Washington, Inc.* (D.C. App. 1967, 236 A. 2d 60).

Motion to amend complaint

In this case the court held that the Court of General Sessions had the power to permit amendment of complaint, which originally sought $20,000 damages putting cause of action beyond reach of that court, and to permit reduction of the ad damnum and, absent justifying reason for denial of motion to amend, motion should have been granted. *P. Taylor* v. *P. Beckas* (1970, 424 F. 2d 905, 137 U.S. App. D.C. 417).

§ 11–922. Transfer of civil actions to Superior Court

(a) In a civil action begun in the United States District Court for the District of Columbia before the effective date of the District of Columbia Court Reorganization Act of 1970 (other than an action for equitable relief), where it appears to the satisfaction of the court at or subsequent to any pretrial hearing but before trial thereof that the action will not justify a judgment in excess of $10,000 and does not otherwise invoke the jurisdiction of the court, the court may certify the action to the Superior Court for trial.

(b) In a civil action begun in the United States District Court for the District of Columbia during the thirty-month period beginning on the effective date of the District of Columbia Court Reorganization Act of 1970, the court may certify the action to the Superior Court if it appears to the satisfaction of the United States District Court at or subsequent to any pretrial hearing, but before the trial thereof, that—

(1) the action will not justify a judgment in excess of $50,000; and

(2) the action does not otherwise invoke the jurisdiction of the court.

(c) When an action is transferred under this section, the pleadings in the action, together with a copy of the docket entries and copies of any orders entered therein, and the deposit for costs, shall be sent to the Superior Court. The Superior Court shall thereafter treat the case as though it had been filed originally in that court, except that the jurisdiction of the court shall extend to the amount claimed in the action even though it exceeds the applicable jurisdictional limitation. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 486.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 11–962 in 1967 Edition]

Amendment of pleadings

Granting of leave to amend pleading is a matter within the sound discretion of the trial judge and only an abuse of that discretion is reviewable on appeal. *W. Saddler et ano.* v. *Safeway Stores Inc.* (D.C. App. 1967, 227 A. 2d 394).

In action by plaintiffs seeking $5,000 for loss of consortium and $10,000 for personal injuries sustained when a shelf containing canned goods fell on a plaintiff while she was shopping in defendant's store, refusing to permit plaintiffs to amend their pleading by increasing the ad damnum clause to $125,000 on ground that evidence regarding loss of earnings was weak did not constitute abuse of discretion. *Id.*

Authority for certification

Where District of Columbia federal district court, determined that personal injury and damage actions would not justify judgment in excess of $10,000, it had authority to certify case to Court of General Sessions. *L. Hughes et al.* v. *Pennsylvania Railroad Company* (1969, 409 F. 2d 460, 133 U.S. App. D.C. 174).

Certification near trial date

Federal district court should regard with skepticism motions to certify, under statute governing transfer of civil actions to District of Columbia Court of General Sessions, when made at or near assigned trial date. *L. Hughes et al.* v. *Pennsylvania Railroad Company* (1969, 409 F. 2d 460, 133 U.S. App. D.C. 174).

Discretion of district court

Standard for certification pursuant to statute governing transfer of civil action from federal district court to District of Columbia Court of General Sessions contemplates that broad discretion be vested in district court. *L. Hughes et al.* v. *Pennsylvania Railroad Company* (1969, 409 F. 2d 460, 133 U.S. App. D.C. 174).

Federal district court's discretion in transferring civil action to District of Columbia Court of General Sessions normally will not be disturbed on appeal unless it is arbitrary. *Id.*

Federal district court's discretion to transfer civil action to District of Columbia Court of General Sessions is limited by reviewability for abuse. *Id.*

Reasons for certification

Personal injury and damage actions, certified by federal district court to District of Columbia Court of General Sessions, on day set for commencement of trial, on finding that actions would not justify judgment in excess of $10,000, without setting forth reasons for certification, would be remanded to district court with directions to proceed with trial. *L. Hughes et al.* v. *Pennsylvania Railroad Company* (1969, 409 F. 2d 460, 133 U.S. App. D.C. 174).

Federal district court, in certifying civil action to District of Columbia Court of General Sessions pursuant to statute, should explain its decision in memorandum opinion as aid to Court of Appeals in reviewing such rulings. *Id.*

§ 11–923. Criminal jurisdiction; commmitment

(a) The Superior Court has jurisdiction over all criminal cases pending in the District of Columbia Court of General Sessions before the effective date of the District of Columbia Court Reorganization Act of 1970.

(b)(1) Except as provided in paragraph (2), the Superior Court has jurisdiction of any criminal case under any law applicable exclusively to the District of Columbia.

(2) The Superior Court shall not have jurisdiction of any criminal case under any law applicable exclusively to the District of Columbia begun in the United States District Court for the District of Columbia under section 11–502(2) by the return of an indictment or the filing of an information during the eighteen-month period beginning on such effective date.

(c)(1) With respect to any criminal case over which the Superior Court has jurisdiction, that court may make preliminary examinations and commit offenders, either for trial or for further examination, and may release or detain offenders in accordance with chapter 13 of title 23.

(2) With respect to any criminal case over which the United States District Court for the District of Columbia has jurisdiction, the Superior Court (A) may make preliminary examinations and commit offenders, either for trial or for further examination, but only during the eighteen-month period beginning on the effective date of the District of Columbia Court Reorganization Act of 1970, and (B) may release or detain offenders in accordance with chapter 13 of title 23. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 486.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 11–963 in 1967 Edition]

Appealability of order where court lacked jurisdiction

The court held that the District of Columbia Court of Appeals lacked jurisdiction under Bail Reform Act to review order of judge of District of Columbia Court of General Sessions modifying conditions of release in felony case and properly dismissed the appeal for lack of jurisdiction and District Court of Appeals was not authorized to vacate order in exercise of its general appellate jurisdiction over Court of General Sessions since the order was entered by judge of latter court sitting as committing magistrate in a case involving charges cognizable solely in United States district court. *L. Salley et ano.* v. *United States* (1968, 413 F. 2d 364, 134 U.S. App. D.C. 90).

Applicability of Federal Rules of Criminal Procedure

Court rule which makes Federal Rules of Criminal Procedure applicable to proceedings where judges are acting as committing magistrates would be inapplicable if trial court was merely acting as assignment court when counsel was adjudged in contempt. *In the Matter of G. D. Gates* (D.C. App. 1968, 248 A. 2d 671).

Under court rule which make Federal Rules of Criminal Procedure applicable to proceedings where judges of court are acting as committing magistrates, only rules 3, 4, 5 and 40 would be binding on Court of General Sessions when performing its function as commissioner and sitting as committing magistrate. *Id.*

Equality of district and General Session Courts

Federal district court is not "superior" to District of Columbia Court of General Sessions. *B. R. Burrell* v. *United States* (D.C. App. 1969, 252 A. 2d 897).

Jurisdiction

The District of Columbia Court of General Sessions had jurisdiction to sentence under the Federal Youth Corrections Act even though commitment under act might exceed one year. *A. E. Harvin* v. *United States* (D.C. App. 1968, 245 A. 2d 307).

Pretrial production of grand jury testimony

District of Columbia Court of Appeals had authority to review a refusal by Court of General Sessions to certify that production of grand jury testimony would be appropriate and the United States Court of Appeals for the District of Columbia has jurisdiction to review a refusal by United States District Court for the District of Columbia to order production of grand jury testimony after receiving a certification from the Court of General Sessions. *W. H. Gibson* v. *United States* (1968, 403 F. 2d 166, 131 U.S. App. D.C. 143).

After a grand jury returned a no true bill and prosecutions were initiated in the Court of General Sessions for the District of Columbia by informations, defendant seeking pretrial production of grand jury testimony by complainant and other witnesses government planned to call at trial should first apply for a request or certification by Court of General Sessions before seeking to procure order from United States District Court for production of grand jury testimony. *Id.*

Ruling of district court as binding on Court of General Sessions

United States district court decision, in prosecution for narcotics violation, which suppressed certain evidence as products of illegal search and seizure was not binding on District of Columbia Court of General Sessions, where defendant was charged with possession of prohibited weapon and possession of numbers slips, and which had held previously to United States District Court ruling that certain evidence, which was seized under same circumstances as evidence in federal prosecution, was admissible. *B. R. Burrell* v. *United States* (D.C. App. 1969, 252 A. 2d 897).

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS

§ 11–941. Issuance of warrants; record

Subject to title 23, judges of the Superior Court may, at any time, including Sundays and legal holidays, on complaint or application under oath or actual view, issue warrants for arrest, search or seizure, or electronic surveillance in connection with crimes and offenses committed within the District of Columbia, or for administrative inspections in connection with laws relating to the public health, safety, and welfare. Each proceeding respecting a warrant shall be recorded as prescribed by the court. Warrants shall be issued free of charge. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 487.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–942. Subpenas

(a) The Superior Court may compel the attendance of witnesses by attachment. At the request of any party, subpenas for attendance at a hearing or trial in the Superior Court shall be issued by the clerk of court. A subpena may be served at any place within the District of Columbia, or at any place without the District of Columbia that is within twenty-five miles of the place of the hearing or trial specified in the subpena. The form, issuance, and manner of service of the subpena shall be as prescribed by the rule of the court.

(b) A subpena in a criminal case in which a felony is charged may be served at any place within the United States upon order of a judge of the court. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 487.)

§ 11–943. Process

(a) All process other than a subpena may be served at any place within the District of Columbia, and, when authorized by statute or by the Federal Rules of Civil Procedure, at any place without the District of Columbia.

(b) Service upon a third-party defendant, upon a person whose joinder is needed for just adjudication, and upon persons required to respond to any order of commitment for civil contempt may be served at all places outside the District of Columbia that are not more than one hundred miles from the place of hearing or trial specified.

(c) The form, issuance, and manner of service of process shall be prescribed by rule of the court. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 487.)

§ 11–944. Contempt power

In addition to the powers conferred by section 402 of title 18, United States Code, the Superior Court, or a judge thereof, may punish for disobedience of

an order or for contempt committed in the presence of the court. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 487.)

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 11–756(c), now covered by 11–944) is referred to in section 2–456.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also §§ 11–982, 11–1581 in 1967 Edition]

Contempt

Sentence of five days for contempt of court by defendant in civil action who "shouted" and "banged" his fist on bench was within permissible limits prescribed by this section and not subject to review by District of Columbia Court of Appeals. *In the Matter of J. N. Ellis* (D.C. App. 1970, 264 A. 2d 300).

In this case, the Court of Appeals adopted the rule that where attorney fails to appear in court when he has duty to do so, the offensive conduct, i.e., the absence, occurs in presence of the court and the unexcused absence may be held to be contempt, provided notice and an opportunity to be heard are given under this section. *G. Sykes* v. *United States* (D.C. App. 1970, 264 A. 2d 894).

In this case, the evidence was sufficient to support a finding of contempt by attorney who failed to appear at time when he had case on court calendar. *Id.*

Court in criminal trial had power to punish defense counsel for contempt for violation of instructions. *In the Matter of A. L. Benton* (D.C. App. 1967, 228 A. 2d 324).

To adjudge counsel guilty of contempt for disobedience of order or direction of trial court, order must be clear and unambiguous. *Id.*

Trial court's instruction to defense counsel not to bring up "any prior criminal record" was fatally ambiguous in that it might or might not proscribe bringing up lack of any prior criminal record and in absence of record indicating willful and knowing violation of instructions in counsel's referring to lack of any prior criminal record, contempt conviction could not stand. *Id.*

Due process

Requirements of due process were complied with where transcript and statement in which judge described his encounter in open court with defense counsel showed that counsel's misconduct was in actual presence of court and set forth facts with sufficient particularity to enable reviewing court to know language of defense counsel which trial court found contemptuous. *In the Matter of G. D. Gates* (D.C. App. 1968, 248 A. 2d 671).

In contempt-in-open-court case, there is no requirement for evidence or assistance of counsel before punishment, and order adjudging defense counsel in criminal proceeding to be in contempt of court was not vitiated by reason of fact that counsel was punished in summary fashion without safeguards normally afforded defendant in criminal prosecution. *Id.*

Jurisdiction to punish for contempt

In a case where temporary restraining orders issued by district court dealing with conditions of unrest on college campuses purported to apply to students and nonstudents, adults or juveniles without exception, sections 11–1551, 11–1552 and 11–1581 did not deprive district court of power to punish juvenile offenders for contempt of its restraining orders. *In the Matter of A. Williams, Jr.* and *M. M. Coates* (1969, 306 F. Supp. 617).

§ 11–945. Oaths, affirmations, and acknowledgments

Each judge and each employee of the Superior Court authorized by the chief judge may administer oaths and affirmations and take acknowledgments. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 487.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–946. Rules of court

The Superior Court shall conduct its business according to the Federal Rules of Civil Procedure and the Federal Rules of Criminal Procedure (except as otherwise provided in title 23) unless it prescribes or adopts rules which modify those Rules. Rules which modify the Federal Rules shall be submitted for the approval of the District of Columbia Court of Appeals, and they shall not take effect until approved by that court. The Superior Court may adopt and enforce other rules as it may deem necessary without the approval of the District of Columbia Court of Appeals if such rules do not modify the Federal Rules. The Superior Court may appoint a committee of lawyers to advise it in the performance of its duties under this section. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 487.)

NOTES TO DECISIONS

Construction

Alleged father is not entitled to take a pretrial deposition of complainant in paternity proceeding held before District of Columbia Court Reform and Criminal Procedure Act of 1970 became effective. *F. W. Johnson* v. *District of Columbia* (D.C. App. 1970, 271 A. 2d 563).

Chapter 11.—FAMILY DIVISION OF THE SUPERIOR COURT

Sec.
11–1101. Exclusive jurisdiction.

§ 11–1101. Exclusive jurisdiction

The Family Division of the Superior Court shall be assigned, in accordance with chapter 9, exclusive jurisdiction of—

(1) actions for divorce from the bond of marriage and legal separation from bed and board, including proceedings incidental thereto for alimony, pendente lite and permanent, and for support and custody of minor children;

(2) applications for revocation of divorce from bed and board;

(3) actions to enforce support of any person as required by law;

(4) actions seeking custody of minor children, including petitions for writs of habeas corpus;

(5) actions to declare marriages void;

(6) actions to declare marriages valid;

(7) actions for annulments of marriage;

(8) determinations and adjudications of property rights, both real and personal, in any action referred to in this section, irrespective of any jurisdictional limitation imposed on the Superior Court;

(9) proceedings in adoption;

(10) proceedings under the Act of July 10, 1957 (D.C. Code, secs. 30–301 to 30–324);

(11) proceedings to determine paternity of any child born out of wedlock;

(12) civil proceedings for protection involving intrafamily offenses, instituted pursuant to chapter 10 of title 16;

(13) proceedings in which a child, as defined in section 16–2301, is alleged to be delinquent, neglected, or in need of supervision;

(14) proceedings under chapter 5 of title 21 relating to the commitment of the mentally ill;

(15) proceedings under chapter 11 of title 21 relating to the commitment of the substantially retarded; and

(16) proceedings under Interstate Compact on Juveniles (described in title IV of the District of Columbia Court Reform and Criminal Procedure Act of 1970).

(July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 488; Dec. 7, 1970, Pub. L. 91–530, § 2(a)(2)(3), 84 Stat. 1390.)

REFERENCE IN TEXT

The Interest Compact on Juveniles, referred to in par. 16, is set out under § 32–1102.

AMENDMENT

1970—Section 2(a)(2)(3) of act Dec. 7, 1970, Pub. L. 91–530, amended par. (8) by striking out "subsection" and inserting in lieu thereof "section"; and amended par. (16) by striking out "VII" and inserting in lieu thereof "IV".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–530

See sec. 2(d) of Pub. L. 91–530, set out as a note under § 11–921.

TEMPORARY ADMINISTRATION OF JUVENILE COURT OF THE DISTRICT OF COLUMBIA AND ASSIGNMENT OF JUDGES TO THAT COURT

Section 196 of Pub. L. 91–358, provided:

(a) Notwithstanding the provisions of title 11 of the District of Columbia Code, as in effect on the date of enactment of this title, the chief judge of the District of Columbia Court of General Sessions (1) shall without additional compensation be responsible for the administration of the Juvenile Court of the District of Columbia during the period beginning on the date of the enactment of this title and ending on the day before the effective date of this title; and (2) may during the same period assign judges of the District of Columbia Court of General Sessions to serve as judges of the Juvenile Court.

(b) Notwithstanding the provisions of chapter 15 of title 11 of the District of Columbia Code as in effect on the date of enactment of this title, the judge appointed to fill the vacancy in the office of chief judge of the Juvenile Court of the District of Columbia existing on that date shall serve as an associate judge of that court.

EFFECTIVE DATE OF SECTIONS 195 AND 196

Section 199(b)(8) of Pub. L. 91–358, provided:

(8) Sections 195 and 196 shall take effect on the date of the enactment of this Act. [July 29, 1970] [See note to § 11–1501]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–2305, 16–2330, 16–2331, 16–2341, 16–2342, 16–2343, 16–2344, 16–2348.

NOTES TO DECISION UNDER PRIOR LAW

[See also §§ 11–1141, 11–1555 and 16–2342 in 1967 Edition]

Abuse of discretion

In this case the award of custody of the children to wife pending outcome of determination whether husband or allegedly adulterous wife should have custody was not an abuse of discretion. *E. A. McCallum* v. *D. W. McCallum, Jr.* (D.C. App. 1969, 256 A. 2d 911).

Division of real property, in an action by husband for absolute divorce on ground of voluntary separation, awarding ⅝ interest to the husband who, after 1962, made majority of payments on house, and ⅜ interest to the wife, who had arbitrarily appropriated jointly owned personalty, was not an abuse of discretion. *D. B. Stanley* v. *C. L. Stanley* (D.C. App. 1967, 234 A. 2d 810).

Adjudication of property rights

Domestic relations branch of court of general sessions has exclusive jurisdiction over determinations and adjudications of property rights in actions for annulment of marriages. *A. D. Martin* v. *L. P. Martin* (D.C. App. 1968, 240 A. 2d 363).

Appointment of guardian ad litem

Court of General Sessions, Domestic Relations Branch, has authority to appoint experienced and disinterested persons to aid in resolving custody disputes in order to enable court to protect interest and welfare of child where court is acting in capacity of parens patriae. *R. Eaton* v. *J. W. Karr, Guardian Ad Litem* (D.C. App. 1969, 251 A. 2d 640).

Basis for ajudication of property rights

Specific finding of constructive desertion was unwarranted and unnecessary to determination of an equitable division of jointly owned real property in action by husband for absolute divorce on the ground of voluntary separation, notwithstanding the fact that wife had previously obtained limited divorce on ground of cruelty and allegedly had been forced to move from parties' home because of refusal of husband to do so. *D. B. Stanley* v. *C. L. Stanley* (D.C. App. 1967, 234 A. 2d 810).

Issue of jointly owned personalty was properly considered, in action by husband for absolute divorce on the ground of voluntary separation, in making a division of real property, notwithstanding the fact that husband, in wife's prior action for limited divorce, failed to question wife's right to personalty taken by her at the time she left parties' home. *Id.*

Construction

Difference between terms "award and apportion" as used in District of Columbia statute relating to court's authority to apportion property in divorce action and terms "determine and adjudicate" as used in statute relating to general jurisdictional grant to Domestic Relations Branch is simply difference between directly and indirectly affecting title to land. *E. B. Argent* v. *S. E. Argent* (1968, 396 F. 2d 695, 130 U.S. App. D.C. 46).

Constructive trust

In proceeding on counterclaim of defendant veteran who during marriage had been receiving disability benefits from Veterans Administration and who, as result of letter from his wife giving notice of birth of child and seeking dependent's allowance, received increase payment for support of wife and child, court had jurisdiction of defendant's prayer that trial judge decree constructive trust for all moneys and other benefits received by wife based on her purported marriage to defendant and for an accounting. *A. D. Martin* v. *L. P. Martin* (D.C. App. 1968, 240 A. 2d 363).

Denial of preliminary injunction

Denial of requested preliminary injunction which would have allowed the husband to remain at the family domicile was tantamount to a preliminary determination granting the wife temporary custody of the children pending outcome of custody action. In awarding custody of the children to the wife the court may make reasonable orders under the circumstances allowing the husband visitation rights. *E. A. McCallum* v. *D. W. McCallum, Jr.* (D.C. App. 1969, 256 A. 2d 911).

Evidence

In an appeal from a judgment of absolute divorce granted wife, the court held the husband should have been allowed to present evidence in support of his allegation that three pieces of real estate were in reality jointly owned even though property was recorded in individual names of parties. *C. W. Dickason* v. *H. E. Dickason* (D.C. App. 1970, 263 A. 2d 640).

—— Sufficiency

In this case, the evidence was sufficient to support juvenile court's finding that juvenile participated as an aider and abettor in assault with intent to commit robbery on a school teacher. *In the matter of Reeder* (D.C. App. 1970, 264 A. 2d 893).

Jurisdiction

In a case where the parties were non-residents, but the husband worked in the District and one child was in school here, it was not abuse of discretion for trial court to assume jurisdiction over claim for support under separation agreement. *W. N. McGehee, Jr.* v. *F. T. Maxfield* (D.C. App. 1969, 256, A. 2d 576).

Former wife's action for specific performance or damages for former husband's alleged failure to abide by terms of separation agreement providing for maintenance and support of wife was within exclusive jurisdiction of Domestic Relations Branch of District of Columbia Court of General Sessions. *F. C. Den* v. *A. A. J. Den* (1967, 375 F. 2d 328, 126 U.S. App. D.C. 152).

Congress intended that domestic relations matters be consolidated in single forum. *Id.*

Juvenile court is proper forum in which to seek adjudication of paternity and an award for support of any child born out of wedlock. *A. D. Martin* v. *L. P. Martin* (D.C. App. 1968, 240 A. 2d 363).

Jurisdiction over foreign property

In a divorce action, District of Columbia court could not award and apportion property located in Maryland but it did have jurisdiction to determine an adjudicate rights of parties before it to such property and direct parties to execute such instruments as were necessary to effectuate that adjudication. *E. B. Argent* v. *S. E. Argent* (1968, 396 F. 2d 695, 130 U.S. App. 46).

Maryland law that when parties are validly divorced real property formerly held by them as tenants by entirety, until otherwise apportioned in appropriate Maryland court, is held by them as tenants in common did not preclude District of Columbia court from exercising its authority to determine and adjudicate property rights of parties before it. *Id.*

District of Columbia courts are authorized to adjust and apportion property rights in property held jointly by parties to divorce action and must do so in same proceeding in which divorce decree is entered although their enforcement power as to property located in another state is limited to determination and adjudication of parties' rights. *Id.*

Law of forum

Law of forum governs remedial powers of court to deal with property located in another state. *E. B. Argent* v. *S. E. Argent* (1968, 396 F. 2d 695, 130 U.S. App. D.C. 46).

Nature of proceeding

Paternity proceedings are neither entirely criminal nor civil in nature, but are quasi-criminal. *E. Saunders, Jr.* v. *District of Columbia* (D.C. App. 1970, 263 A. 2d 58).

Powers

If divorced wife was entitled to relief in her suit for specific performance or damages for former husband's alleged failure to abide by terms of separation agreement providing for maintenance and support of wife, it would be within power of Domestic Relations Branch of District of Columbia Court of General Sessions to grant it, whether it was equitable or legal in nature. *F. C. Den* v. *A. A. J. Den* (1967, 375 F. 2d 328, 126 U.S. App. D.C. 152).

Support and education of adult child

In this case, the court held that a father has no legal obligation to provide for continued college education of his daughter, who had been placed in custody of the mother pursuant to separation agreement, after the daughter reached majority. *W. T. Spence* v. *F. A. Spence* (D.C. App. 1970, 266 A. 2d 29).

A father is not legally required to support and educate an adult child, except as specified by statute when the child is in need of public assistance or is hospitalized because of mental illness. *Id.*

Support for child

The interest of the child is, within reason, primary to any prior separation agreement between the parties to divorce, and provisions in agreement for child support are consequently always open to later modification by court upon a proper showing. *R. L. Davis* v. *J. H. Davis* (D.C. App. 1970, 268 A. 2d 515).

Transfer to domestic relations branch after appeal

Where appeal was taken from district court's entry of summary judgment for defendant in suit for specific performance or damages based on alleged failure of defendant to abide by terms of separation agreement and Court of Appeals determined that action was within exclusive jurisdiction of Domestic Relations Branch of District of Columbia Court of General Sessions, interests of justice would best be served by remanding case to District Court with directions to vacate its order and transfer action to the Domestic Relations Branch. *F. C. Den* v. *A. A. J. Den* (1967, 375 F. 2d 328, 126 U.S. App. D.C. 152).

"Wife" defined

Although plaintiff suing for specific performance or damages for defendant's alleged failure to abide by terms of separation agreement was no longer married to defendant, she was a "wife" for purposes of statute providing that Domestic Relations Branch of District of Columbia Court of General Sessions has exclusive jurisdiction of civil action to enforce support of wife. *F. C. Den* v. *A. A. J Den* (1967, 375 F. 2d 328, 126 U.S. App. D.C. 152).

Chapter 12.—TAX DIVISION OF THE SUPERIOR COURT

Sec.
11–1201. Exclusive jurisdiction.
11–1202. Abolition of other remedies.
11–1203. Rules and regulations.

§ 11–1201. Exclusive jurisdiction

The Tax Division of the Superior Court shall be assigned exclusive jurisdiction of—

(1) all appeals from and petitions for review of assessments of tax (and civil penalties thereon) made by the District of Columbia; and

(2) all proceedings brought by the District of Columbia for the imposition of criminal penalties pursuant to the provisions of the statutes relating to taxes levied by or in behalf of the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 488.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–1202. Abolition of other remedies

Notwithstanding any other provision of law, the jurisdiction of the Tax Division of the Superior Court to review the validity and amount of all assessments of tax made by the District of Columbia is exclusive. Effective on and after the effective date of the District of Columbia Court Reorganization Act of 1970, any common-law remedy with respect to assessments of tax in the District of Columbia and any equitable action to enjoin such assessments available in a court other than the former District of Columbia Tax Court is abolished. Actions properly filed before the effective date of that Act are not affected by this section and the court in which any such action has been filed may retain jurisdiction until its disposition. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 489.)

§ 11–1203. Rules and regulations

The Superior Court may make such rules and regulations for conducting business in the Tax Division, consistent with the statutes applicable to such business and with the Superior Court's general rules of practice and procedure, as it may deem necessary and proper. Rules and regulations for the Tax Division shall, insofar as possible, assure the prompt disposition of matters before the Tax Division to the end that the taxing statutes of the District of Columbia shall be fairly and efficiently enforced. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 489.)

Chapter 13.—SMALL CLAIMS AND CONCILIATION BRANCH OF THE SUPERIOR COURT

SUBCHAPTER I.—CONTINUATION AND SESSIONS

Sec.
11–1301. Continuation of Branch.
11–1302. Sessions.

SUBCHAPTER II.—JURISDICTION AND PROCEDURES

11–1321. Exclusive jurisdiction of small claims.
11–1322. Arbitration and conciliation.

Sec.
11–1323. Certification of cases by Superior Court judges; recertification; certification by Branch.

CHAPTER REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–3901.

SUBCHAPTER I.—CONTINUATION AND SESSIONS

§ 11–1301. Continuation of Branch

The Small Claims and Conciliation Branch shall continue as a branch of the Civil Division in the Superior Court. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 489.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–1302. Sessions

The Small Claims and Conciliation Branch, with a judge in attendance, shall be open for the transaction of business on every day of the year except Saturday afternoons, Sundays, and legal holidays, and shall hold at least one evening session during each week. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 489.)

SUBCHAPTER II.—JURISDICTION AND PROCEDURES

§ 11–1321. Exclusive jurisdiction of small claims

The Small Claims and Conciliation Branch has exclusive jurisdiction of any action within the jurisdiction of the Superior Court which is only for the recovery of money, if the amount in controversy does not exceed $750, exclusive of interest, attorney fees, protest fees, and costs. An action which affects an interest in real property may not be brought in the Branch. If a counterclaim, cross claim, or any other claim or any defense, affecting an interest in real property, is made in an action brought in the Branch, the action shall be certified to the Civil Division. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 489.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–1323, 16–3904.

NOTES TO DECISIONS UNDER PRIOR LAW

Amount of claim

The amount of claim by plaintiff alleging that defendant finance service is charging a usurious rate of interest is critical to proper determination of threshold question, since if claim is for less than $150, the Small Claims and Conciliation Branch has exclusive jurisdiction and action would not lie in Civil Division of Court of General Sessions. *P. Simmons* v. *Central Charge Service, Inc.* (D.C. App. 1970, 269 A. 2d 850).

§ 11–1322. Arbitration and conciliation

In order to effect the speedy settlement of controversies, and with the consent of the parties thereto, the Small Claims and Conciliation Branch may settle cases, irrespective of the amount involved, by the methods of arbitration and conciliation. A judge sitting in the Branch may act as a referee or arbitrator, either alone or in conjunction with other persons, as provided by rule of the court. A judge, officer, or employee of the Superior Court may not accept any fee or compensation in addition to his salary for services performed pursuant to this section. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 490.)

§ 11–1323. Certification of cases by Superior Court judges; recertification; certification by Branch

(a) When the interests of justice seem to require and all parties consent thereto, a judge of the Superior Court may certify a case to the Small Claims and Conciliation Branch for conciliation or to obtain a complete or partial agreed statement of facts or stipulation, which will simplify and expedite the ultimate trial of the case. With the consent of all parties, the trial of the case may be completed in the Branch. In the absence of consent, the case shall be recertified to another judge of the Civil Division for trial.

(b) When the interests of justice seem to require, the Branch may certify to the Civil Division any action brought in the Branch under section 11–1321. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 490.)

Chapter 15.—JUDGES OF THE DISTRICT OF OF COLUMBIA COURTS

SUBCHAPTER I.—APPOINTMENT; QUALIFICATIONS; SERVICE OF JUDGES

Sec.
11–1501. Appointment and qualifications of judges.
11–1502. Tenure.
11–1503. Designation of chief judge.
11–1504. Service of retired judges.
11–1505. Vacations.

SUBCHAPTER II.—THE DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND TENURE

11–1521. Establishment of Commission.
11–1522. Membership.
11–1523. Terms of office; vacancy; continuation of service by a member.
11–1524. Compensation.
11–1525. Operations; personnel; administrative services.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 11–703.

SUBCHAPTER I.—APPOINTMENT; QUALIFICATIONS; SERVICE OF JUDGES

§ 11–1501. Appointment and qualifications of judges

(a) The President of the United States shall nominate, and by and with the advice and consent of the Senate, shall appoint all judges of the Dis-

trict of Columbia courts. He shall have power to fill all vacancies that may occur in those courts during a recess of the Senate, by granting commissions which shall expire at the end of the next session of the Senate.

(b) A person may not be appointed a judge of a District of Columbia court unless he—

(1) is a citizen of the United States;

(2) (A) is a member of the bar of the District of Columbia and (B) (i) has been a member of such bar for a period of at least five years, or (ii) in the case of a professor of law in a law school in the District of Columbia or of an attorney employed in the District of Columbia by the United States or the District of Columbia, has been eligible for membership in the bar of the District of Columbia for at least five years prior to his appointment;

(3) has been actively engaged, for at least five of the ten years immediately prior to his appointment, as an attorney in the practice of law in the District of Columbia, as a judge of a District of Columbia court, as a professor of law in a law school in the District of Columbia, or as an attorney employed in the District of Columbia by the United States or the District of Columbia; and

(4) is a bona fide resident of the area consisting of the District of Columbia, Montgomery and Prince George's Counties in Maryland, Arlington and Fairfax Counties (and any cities within the outer boundaries thereof) and the city of Alexandria in Virginia and has maintained an actual place of abode in such area for at least five years prior to his appointment.

During his term of service and for one year after the termination thereof, no member of the District of Columbia Commission on Judicial Disabilities and Tenure shall be eligible for nomination or appointment to a District of Columbia court. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 491; Dec. 7, 1970, Pub. L. 91–530, § 2(a) (4), 84 Stat. 1390.)

AMENDMENT

1970—Section 2(a) (4) of act Dec. 7, 1970, Pub. L. 91–530, amended subsec. (b) (4) by inserting immediately after "Fairfax Counties" the following: "(and any cities within the outer boundaries thereof)".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–530

See sec. 2(d) of Pub. L. 91–530, set out as a note under § 11–921.

CONTINUATION OF SERVICE OF JUDGES OF DISTRICT OF COLUMBIA COURTS

Section 194 of Pub. L. 91–358, provided: A judge of the District of Columbia Court of General Sessions, the Juvenile Court of the District of Columbia, or the District of Columbia Tax Court who is serving as a judge of such a court on the day before the effective date of this title under an appointment made before such date shall on such date continue to serve as a judge of the Superior Court of the District of Columbia. No amendment made by this title shall be construed to extend the term of any such judge appointed before the date of enactment of this title. No amendment made by this title shall be construed to extend the term of office of a judge of the District of Columbia Court of Appeals appointed before the date of enactment of this title. The chief judge of the District of Columbia Court of Appeals in office on the day before the effective date of this title shall, on and after such date, continue in office as chief judge of that court; and, notwithstanding section 11–1503 of title 11 of the District of Columbia Code (as contained in the revision made by part A of this title), his term of office shall expire at the time his term of office under his latest appointment as chief judge expires. The chief judge of the District of Columbia Court of General Sessions in office on the day before the effective date of this title shall, on and after such date, serve as the chief judge of the Superior Court of the District of Columbia; and, notwithstanding section 11–1503 of title 11 of the District of Columbia Code (as contained in the revision made by part A of this title), his term of office as chief judge of that court shall expire at the time his term of office under his latest appointment as chief judge of the District of Columbia Court of General Sessions would have expired but for the merger of that court into the Superior Court.

APPOINTMENT OF ADDITIONAL JUDGES AND EXECUTIVE OFFICER OF DISTRICT OF COLUMBIA COURTS

Section 195 of Pub. L. 91–358, provided:

(a) (1) The President of the United States shall nominate, and by and with the advice and consent of the Senate shall appoint, three additional judges to the District of Columbia Court of Appeals who shall have the qualifications prescribed by section 11–1501 of title 11 of the District of Columbia Code as contained in the revision made by part A of this title, and who shall, upon taking the oath required by law, enter into immediate service on that court. Subject to mandatory retirement at age 70 and to the provisions of subchapters II and III of chapter 15 of title 11 of the District of Columbia Code (as contained in such revision), the term of office of a judge appointed under this paragraph shall be 15 years. At the expiration of his term, such judge shall continue to serve until his successor is appointed and qualifies.

(2) The President of the United States shall nominate, and by and with the advice and consent of the Senate shall appoint, ten additional judges to the District of Columbia Court of General Sessions who shall have the qualifications prescribed by section 11–1501 of title 11 of the District of Columbia Code as contained in the revision made by part A of this title, and who shall, upon taking the oath required by law, enter into immediate service on that court. Subject to mandatory retirement at age 70 and to the provisions of subchapters II and III of chapter 15 of title 11 of the District of Columbia Code (as contained in such revision), the term of office of a judge appointed under this paragraph shall be 15 years. At the expiration of his term, such judge shall continue to serve until his successor is appointed and qualifies.

(b) The Director of the Administrative Office of the United States Courts shall submit a list of at least three qualified persons and a committee (consisting of (1) the chief judges of the District of Columbia Court of Appeals and the District of Columbia Court of General Sessions; (2) one associate judge of the District of Columbia Court of Appeals elected by the judges of that court; and (3) two associate judges of the District of Columbia Court of General Sessions elected by the judges of that court) shall appoint from such list (and may remove), with the concurrence of the respective chief judges, an Executive Officer of the District of Columbia courts. Until the effective date of this title, the Executive Officer shall receive the same compensation as is prescribed for an associate judge of the District of Columbia Court of General Sessions. The Executive Officer in office on the effective date of this title shall continue to serve in such office until removed or until his successor has been selected in accordance with subchapter I of chapter 17 of title 11 of the District of Columbia Code, as contained in the revision made by part A of this title.

(c) Notwithstanding title 11 of the District of Columbia Code, as in effect on the date of enactment of this title, in the case of any vacancy in the District of Columbia Court of Appeals, the District of Columbia Court of General Sessions, or the Juvenile Court of the District of Columbia occurring before the effective date of this title, a judge appointed after the date of enactment of this title to fill any such vacancy (1) shall have the qualifications prescribed in section 11–1501 of title 11 of the District of Columbia Code as contained in the

revision made by part A, and (2) shall, subject to mandatory retirement at age seventy and to the provisions of subchapters II and III of chapter 15 of title 11 of the District of Columbia Code (as contained in such revision), have a term of office of 15 years. At the expiration of his term, such judge shall continue to serve until his successor is appointed and qualifies.

EFFECTIVE DATE OF SECTIONS 195 AND 196

Section 199(b)(8) of Pub. L. 91–358, provided: (8) Sections 195 and 196 shall take effect on the date of the enactment of this Act [July 29, 1970]. [See note to § 11–1101]

§ 11–1502. Tenure

Subject to mandatory retirement at age 70 and to the provisions of subchapters II and III of this chapter, a judge of a District of Columbia court appointed on or after the date of enactment of the District of Columbia Court Reorganization Act of 1970 shall serve for a term of fifteen years, and upon completion of such term, such judge shall continue to serve until his successor is appointed and qualifies. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 491.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1562.

§ 11–1503. Designation of Chief Judge

(a) The chief judge of a District of Columbia court shall be designated by the President of the United States from among the judges of the court in regular active service, and shall serve for a term of four years or until his successor is designated. He shall be eligible for redesignation. A judge may relinquish his position as chief judge, after giving notice to the President.

(b) If a chief judge is not redesignated, or relinquishes the office of chief judge, he shall continue as an associate judge. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 491.)

§ 11–1504. Service of retired judges

A judge, retired for reasons other than disability may perform, upon designation of a chief judge, those judicial duties which he is willing and able to undertake. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 491.)

§ 11–1505. Vacations

(a) Each judge of the District of Columbia courts shall be entitled to an annual vacation of not more than 30 calendar days. Such vacation shall be taken at such time or times as prescribed by the chief judge of the District of Columbia Court of Appeals for judges of that court and by the chief judge of the Superior Court for judges of that court. Time spent by a judge as a member of any conference, committee, or commission established by law shall not be deducted from his vacation period.

(b) In determining when a judge shall take a vacation, and the length thereof, the chief judge exercising authority under this section shall be mindful of the necessity of retaining sufficient judicial manpower in the court under his supervision to permit at all times the prompt and effective disposition of the business of such court. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 492.)

SUBCHAPTER II.—THE DISTRICT OF COLUMBIA COMMISSION ON JUDICIAL DISABILITIES AND TENURE

§ 11–1521. Establishment of Commission

There shall be a District of Columbia Commission on Judicial Disabilities and Tenure (hereafter in this subchapter referred to as the "Commission"). The Commission shall have power to suspend, retire, or remove a judge of a District of Columbia court, as provided in this subchapter. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 492.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–1522. Membership

(a) The Commission shall consist of five members appointed as follows:

(1) The President of the United States shall appoint three members of the Commission. Of the members appointed by the President—

(A) at least one member must be a member of the District of Columbia bar who has been actively engaged in the practice of law in the District of Columbia for at least five of the ten years immediately before his appointment; and

(B) at least two members must be residents of the District of Columbia.

(2) The Commissioner of the District of Columbia shall appoint one member of the Commission. The member appointed by the Commissioner must be a resident of the District of Columbia and not an attorney.

(3) The chief judge of the United States District Court for the District of Columbia shall appoint one member of the Commission. The member appointed by the chief judge shall be an active or retired Federal judge serving in the District of Columbia.

The President shall designate as Chairman of the Commission one of his appointees who is a member of the District of Columbia bar who has been actively engaged in the practice of law in the District of Columbia for at least five of the ten years before the member's appointment.

(b) There shall be three alternate members of the Commission, who shall serve as members pursuant to rules adopted by the Commission. The alternate members shall be appointed as follows:

(1) The President shall appoint one alternate member, who shall be a resident of the District of Columbia and a member of the bar of the District of Columbia who has been actively engaged in the practice of law in the District of Columbia for at least five of the ten years immediately before his appointment.

(2) The Commissioner shall appoint one alternate member who shall be a resident of the District of Columbia and not an attorney.

(3) The chief judge of the United States District Court for the District of Columbia shall appoint one alternate member who shall be an active or retired Federal judge serving in the District of Columbia.

(c) No member or alternate member of the Commission shall be a member, officer, or employee of

the legislative branch or of an executive or military department of the United States Government (listed in section 101 or 102 of title 5, United States Code); and no member or alternate member (other than a member or alternate member appointed by the chief judge of the United States District Court for the District of Columbia) shall be an officer or employee of the judicial branch of the United States Government. No member or alternate member of the Commission shall be an officer or employee of the District of Columbia government (including its judicial branch). (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 492.)

§ 11–1523. Terms of office; vacancy; continuation of service by a member

(a)(1) Except as provided in paragraph (2), the term of office of members and alternate members of the Commission shall be six years.

(2) Of the members and alternate members first appointed to the Commission—

(A) one member and alternate member appointed by the President shall be appointed for a term of six years, one member appointed by the President shall be appointed for a term of four years, and one such member shall be appointed for a term of two years, as designated by the President at the time of appointment;

(B) the member and alternate member appointed by the chief judge of the United States District Court for the District of Columbia shall be appointed for a term of four years; and

(C) the member and alternate member appointed by the Commissioner of the District of Columbia shall be appointed for a term of two years.

(b) A member or alternate member appointed to fill a vacancy occurring before the expiration of the term of his predecessor shall serve only for the remainder of that term. Any vacancy on the Commission shall be filled in the same manner as the original appointment was made.

(c) If approved by the Commission, a member may serve after the expiration of his term for purposes of participating until conclusion in a matter, relating to the suspension, retirement, or removal of a judge, begun before the expiration of his term. A member's successor may be appointed without regard to the member's continuation in service, but his successor may not participate in the matter for which the member's continuation in service was approved. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 493.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–1524. Compensation

Any member or alternate member who is an active or retired Federal judge or an officer or employee of the United States shall serve without compensation. Other members or alternate members shall receive the daily equivalent of the rate provided for GS–18 of the General Schedule when actually engaged in service for the Commission. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 493.)

§ 11–1525. Operations; personnel; administrative services

(a) The Commission may make such rules and regulations for its operations as it may deem necessary, and such rules and regulations shall be effective on the date specified by the Commission. The District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1510) shall be applicable to the Commission only as provided by this subsection. For the purposes of the publication of rules and regulations, judicial notice, and the filing and compilation of rules, sections 5, 7, and 8 of that Act (D.C. Code, secs. 1–1504, 1–1506, and 1–1507), insofar as consistent with this subchapter, shall be applicable to the Commission; and for purposes of those sections, the Commission shall be deemed an independent agency as defined in section 3(5) of that Act (D.C. Code, sec. 1–1502). Nothing contained herein shall be construed to require prior public notice and hearings on the subject of rules adopted by the Commission.

(b) The Commission is authorized, without regard to the provisions governing appointment and classification of District of Columbia employees, to appoint and fix the compensation of, or to contract for, such officers, assistants, reporters, counsel, and other persons as may be necessary for the performance of its duties. It is authorized to obtain the services of medical and other experts in accordance with the provisions of section 3109 of title 5, United States Code, but at rates not to exceed the daily equivalent of the rate provided for GS–18 of the General Schedule.

(c) The District of Columbia is authorized to detail, on a reimbursable basis, any of its personnel to assist in carrying out the duties of the Commission.

(d) Financial and administrative services (including those related to budgeting and accounting, financial reporting, personnel, and procurement) shall be provided to the Commission by the District of Columbia, for which payment shall be made in advance, or by reimbursement, from funds of the Commission in such amounts as may be agreed upon by the Chairman of the Commission and the District of Columbia government. Regulations of the District of Columbia for the administrative control of funds shall apply to funds appropriated to the Commission. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 493.)

§ 11–1526. Removal; involuntary retirement; proceedings

(a)(1) A judge of a District of Columbia court shall be removed from office upon the filing in the District of Columbia Court of Appeals by the Commission of an order of removal certifying the entry, in any court within the United States, of a final judgment of conviction of a crime which is punishable as a felony under Federal law or which would be a felony in the District of Columbia.

(2) A judge of a District of Columbia court shall also be removed from office upon affirmance of an appeal from an order of removal filed in the District of Columbia Court of Appeals by the Commission

(or upon expiration of the time within which such an appeal may be taken) after a determination by the Commission of—

(A) willful misconduct in office,

(B) willful and persistent failure to perform judicial duties, or

(C) any other conduct which is prejudicial to the administration of justice or which brings the judicial office into disrepute.

(b) A judge of a District of Columbia court shall be involuntarily retired from office when (1) the Commission determines that the judge suffers from a mental or physical disability (including habitual intemperance) which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of his judicial duties, and (2) the Commission files in the District of Columbia Court of Appeals an order of involuntary retirement and the order is affirmed on appeal or the time within which an appeal may be taken from the order has expired.

(c)(1) A judge of a District of Columbia court shall be suspended, without salary—

(A) upon—

(i) proof of his conviction of a crime referred to in subsection (a)(1) which has not become final, or

(ii) the filing of an order of removal under subsection (a)(2) which has not become final; and

(B) upon the filing by the Commission of an order of suspension in the District of Columbia Court of Appeals.

Suspension under this paragraph shall continue until termination of all appeals. If the conviction is reversed or the order of removal is set aside, the judge shall be reinstated and shall recover his salary and all rights and privileges of his office.

(2) A judge of a District of Columbia court shall be suspended from all judicial duties, with such retirement salary as he may be entitled to pursuant to subchapter III of this chapter, upon the filing by the Commission of an order of involuntary retirement under subsection (b) in the District of Columbia Court of Appeals. Suspension shall continue until termination of all appeals. If the order of involuntary retirement is set aside, the judge shall be reinstated and shall recover his judicial salary less any retirement salary received and shall be entitled to all the rights and privileges of his office.

(3) A judge of a District of Columbia court shall be suspended from all or part of his judicial duties, with salary, if the Commission, upon the concurrence of three members, (A) orders a hearing for the removal or retirement of the judge pursuant to this subchapter and determines that his suspension is in the interest of the administration of justice, and (B) files an order of suspension in the District of Columbia Court of Appeals. The suspension shall terminate as specified in the order (which may be modified, as appropriate, by the Commission) but in no event later than the termination of all appeals. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 494.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–1527, 11–1529, 11–1562.

§ 11–1527. Procedures

(a)(1) On its own initiative, or upon complaint or report of any person, formal or informal, the Commission may undertake an investigation of the conduct or health of any judge. After such investigation as it deems adequate, the Commission may terminate the investigation or it may order a hearing concerning the health or conduct of the judge. No order affecting the tenure of a judge based on grounds for removal set forth in section 11–1526(a)(2) or 11–1530(b)(3) shall be made except after a hearing as provided by this subchapter. Nothing in this subchapter shall preclude any informal contacts with the judge, or the chief judge of his court, by the Commission, whether before or after a hearing is ordered, to discuss any matter related to its investigation.

(2) A judge whose conduct or health is to be the subject of a hearing by the Commission shall be given notice of such hearing and of the nature of the matters under inquiry not less than thirty days before the date on which the hearing is to be held. He shall be admitted to such hearing and to every subsequent hearing regarding his conduct or health. He may be represented by counsel, offer evidence in his own behalf, and confront and cross-examine witnesses against him.

(3) Within ninety days after the adjournment of hearings, the Commission shall make findings of fact and a determination regarding the conduct or health of a judge who was the subject of the hearing. The concurrence of at least four members shall be required for a determination of grounds for removal or retirement. Upon a determination of grounds for removal or retirement, the Commission shall file an appropriate order pursuant to subsection (a) or (b) of section 11–1526. On or before the date the order is filed, the Commission shall notify the judge, the chief judge of his court, and the President of the United States.

(b) The Commission shall keep a record of any hearing on the conduct or health of a judge and one copy of such record shall be provided to the judge at the expense of the Commission.

(c)(1) In the conduct of investigations and hearings under this section the Commission may administer oaths, order and otherwise provide for the inspection of books and records, and issue subpenas for attendance of witnesses and the production of papers, books, accounts, documents, and testimony relevant to any such investigation or hearing. It may order a judge whose health is in issue to submit to a medical examination by a duly licensed physician designated by the Commission.

(2) Whenever a witness before the Commission refuses, on the basis of his privilege against self-incrimination, to testify or produce books, papers, documents, records, recordings, or other materials, and the Commission determines that the testimony or production of evidence is necessary to the conduct

of its proceedings, it may order the witness to testify or produce the evidence. The Commission may issue the order no earlier than ten days after the day on which it served the Attorney General with notice of its intention to issue the order. The witness may not refuse to comply with the order on the basis of his privilege against self-incrimination, but no testimony or other information compelled under the order (or any information directly or indirectly derived from the testimony or production of evidence) may be used against the witness in any criminal case, nor may it be used as a basis for subjecting the witness to any penalty or forfeiture contrary to constitutional right or privilege. No witness shall be exempt under this subsection from prosecution for perjury committed while giving testimony or producing evidence under compulsion as provided in this subsection.

(3) If any person refuses to attend, testify, or produce any writing or things required by a subpena issued by the Commission, the Commission may petition the United States district court for the district in which the person may be found for an order compelling him to attend and testify or produce the writings or things required by subpena. The court shall order the person to appear before it at a specified time and place and then and there shall consider why he has not attended, testified, or produced writings or things as required. A copy of the order shall be served upon him. If it appears to the court that the subpena was regularly issued, the court shall order the person to appear before the Commission at the time or place fixed in the order and to testify or produce the required writings or things. Failure to obey the order shall be punishable as contempt of court.

(4) In pending investigations or proceedings before it, the Commission may order the deposition of any person to be taken in such form and subject to such limitation as may be prescribed in the order. The Commission may file in the Superior Court a petition, stating generally, without identifying the judge, the nature of the pending matter, the name and residence of the person whose testimony is desired, and directions, if any, of the Commission requesting an order requiring the person to appear and testify before a designated officer. Upon the filing of the petition the Superior Court may order the person to appear and testify. A subpena for such deposition shall be issued by the clerk of the Superior Court and the deposition shall be taken and returned in the manner prescribed by law for civil actions.

(d) It shall be the duty of the United States marshals upon the request of the Commission to serve process and to execute all lawful orders of the Commission.

(e) Each witness, other than an officer or employee of the United States or the District of Columbia, shall receive for his attendance the same fees, and all witnesses shall receive the allowances, prescribed by section 15–714 for witnesses in civil cases. The amount shall be paid by the Commission from funds appropriated to it. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 495.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–1528. Privilege; confidentiality

(a) The filing of papers with and the giving of testimony before the Commission shall be privileged. Unless otherwise authorized by the judge whose conduct or health is the subject of the proceedings under this subchapter, the hearings before the Commission, the record thereof, and all papers filed in connection with such hearings shall be confidential. But on prosecution of a witness for perjury or on review of a decision of the Commission, the record of hearings before the Commission and all papers filed in connection therewith shall be disclosed to the extent required for the prosecution or review.

(b) If the Commission determines that no grounds for removal or involuntary retirement exist it shall notify the judge and inquire whether he desires the Commission to make available to the public information pertaining to the nature of its investigation, its hearings, findings, determinations, or any other fact related to its proceedings regarding his health or conduct. Upon receipt of such request in writing from the judge, the Commission shall make such information available to the public. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 497.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–1529. Judicial review

(a) A judge aggrieved by an order of removal or retirement filed by the Commission pursuant to subsection (a) or (b) of section 11–1526 may seek judicial review thereof by filing notice of appeal with the Chief Justice of the United States. Notice of appeal shall be filed within 30 days of the filing of the order of the Commission in the District of Columbia Court of Appeals.

(b) Upon receipt of notice of appeal from an order of the Commission, the Chief Justice shall convene a special court consisting of three Federal judges designated from among active or retired judges of the United States Court of Appeals for the District of Columbia Circuit and the United States District Court for the District of Columbia.

(c) The special court shall review the order of the Commission appealed from and, to the extent necessary to decision and when presented, shall decide all relevant questions of law and interpret constitutional and statutory provisions. Within 90 days after oral argument or submission on the briefs if oral argument is waived, the special court shall affirm or reverse the order of the Commission or remand the matter to the Commission for further proceedings.

(d) The special court shall hold unlawful and set aside a Commission order or determination found to be—

(1) arbitrary, capricious, and abuse of discretion, or otherwise not in accordance with law;

(2) contrary to constitutional right, power, privilege, or immunity;

(3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(4) without observance of procedure required by law; or

(5) unsupported by substantial evidence.

In making the foregoing determinations, the special

court shall review the whole record or those parts of it cited by the judge or the Commission, and shall take due account of the rule of prejudicial error.

(e) As appropriate and to the extent consistent with this chapter, the Federal Rules of Appellate Procedure governing appeals in civil cases shall apply to appeals taken under this section.

(f) Decisions of the special court shall be final and conclusive. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 497.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1530.

§ 11–1530. Financial statements

(a) Pursuant to such rules as the Commission shall promulgate, each judge of the District of Columbia courts shall, within one year following the date of enactment of the District of Columbia Court Reorganization Act of 1970 and at least annually thereafter, file with the Commission the following reports of his personal financial interests:

(1) A report of his income and his spouse's income for the period covered by the report, the sources thereof, and the amount and nature of the income received from each such source.

(2) The name and address of each private foundation or eleemosynary institution, and of each business or professional corporation, firm, or enterprise in which he was an officer, director, proprietor, or partner during such period;

(3) The identity of each liability of $5,000 or more owed by him or by him and his spouse jointly at any time during such period.

(4) The source and value of all gifts in the aggregate amount or value of $50 or more from any single source received by him during such period, except gifts from his spouse or any of his children or parents.

(5) The identity of each trust in which he held a beneficial interest having a value of $10,000 or more at any time during such period, and in the case of any trust in which he held any beneficial interest during such period, the identity, if known, of each interest in real or personal property in which the trust held a beneficial interest having a value of $10,000 or more at any time during such period. If he cannot obtain the identity of the trust interest, he shall request the trustee to report that information to the Commission in such manner as the Commission shall by rule prescribe.

(6) The identity of each interest in real or personal property having a value of $10,000 or more which he owned at any time during such period.

(7) The amount or value and source of each honorarium of $300 or more received by him during such period.

(8) The source and amount of all money, other than that received from the United States Government, received in the form of an expense account or as reimbursement for expenditures during such period.

(b)(1) Except as provided in paragraph (2) of this subsection the content of any report filed under this section shall not be open to inspection by anyone other than (A) the person filing the report, (B) authorized members, alternate members, or staff of the Commission to determine if this section has been complied with or in connection with duties of the Commission under this subchapter, or (C) a special court convened under section 11–1529 to review a removal order of the Commission.

(2) Reports filed pursuant to paragraphs (2) and (7) of subsection (a) shall be made available for public inspection and copying promptly after filing and during the period they are kept by the Commission, and shall be kept by the Commission for not less than three years.

(3) The intentional failure by a judge of a District of Columbia court to file a report required by this section, or the filing of a fraudulent report, shall constitute willful misconduct in office and shall be grounds for removal from office under section 11–1526(a)(2). (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 498.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1527.

SUBCHAPTER III.—RETIREMENT

§ 11–1561. Definitions

For purposes of this subchapter—

(1) The term "judge" means any judge of the District of Columbia Court of Appeals or the Superior Court or any person with judicial service as described in paragraph (2) of this section.

(2) The term "judicial service" means service as a judge in the District of Columbia Court of Appeals, the Superior Court, or the former Juvenile Court of the District of Columbia, District of Columbia Tax Court, police court, municipal court, Municipal Court of Appeals, or District of Columbia Court of General Sessions.

(3) The terms "retire" and "retirement" include retirement, resignation, or failure to be recommissioned or reappointed upon the expiration of a commission.

(4) The term "fund" means the District of Columbia Judicial Retirement and Survivors Annuity Fund as provided in section 11–1570.

(5) The term "widow" means a surviving wife of a judge who either (A) has been married to the judge for at least two years preceding his death or (B) is the mother of issue by the marriage and has not remarried.

(6) The term "widower" means a surviving husband of a judge who either (A) has been married to the judge for at least two years preceding her death or (B) is the father of issue by the marriage and has not remarried.

(7) The term "Commissioner" means the Commissioner of the District of Columbia.

(8) The term "child" means—

(A) an unmarried child under eighteen years of age, including (i) an adopted child, and (ii) a stepchild or recognized natural child who lived with the judge in a regular parent-child relationship;

(B) such unmarried child regardless of age who is incapable of self-support because of mental or physical disability incurred before age eighteen; or

(C) such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, university or comparable recognized educational institution. For the purpose of this paragraph, a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while he is regularly pursuing such a course of study or training, is deemed to have become twenty-two years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than five months and if he shows to the satisfaction of the Commissioner that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(9) The term "lump-sum credit for retirement" means the unrefunded amount consisting of—

(A) retirement deductions made from the basic salary of a judge:

(B) amounts deposited covering earlier judicial and nonjudicial service; and

(C) interest on the deductions and deposits at 4 per centum a year to December 31, 1947, and 3 per centum a year thereafter compounded annually to December 31, 1956, or, in the case of a judge separated or transferred to a position not within the purview of this section before he has completed five years of service, to the date of the separation or transfer;

but the term "lump-sum credit for retirement" does not include interest—

(i) if the service covered thereby aggregates one year or less; or

(ii) for the fractional part of a month in the total service.

(10) The term "lump-sum credit for survivor annuity" means the unrefunded amount consisting of—

(A) survivor annuity deductions made from the salary of a judge;

(B) amounts deposited for survivor annuity covering earlier judicial and nonjudicial service; and

(C) interest on the deductions and deposits at 4 per centum a year to December 31, 1947, and 3 per centum a year thereafter compounded annually to December 31, 1956, or, in the case of a judge separated or transferred to a position not within the purview of this section before he has completed five years of service, to the date of the separation or transfer;

but the term "lump-sum credit for survivor annuity" does not include interest—

(i) if the service covered thereby aggregates one year or less; or

(ii) for the fractional part of a month in the total service.

(July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 499; Dec. 7, 1970, Pub. L. 91–530, § 2(a)(5)(6), 84 Stat. 1390.)

AMENDMENT

1970—Section 2(a)(5)(6) of act Dec. 7, 1970, Pub. L. 91–530, amended pars. (5) and (6) by striking out "has either (A)" and inserting in lieu thereof "either (A) has"

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–530

See sec. 2(d) of Pub. L. 91–530, set out as a note under § 11–921.

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

RETIREMENT OF CERTAIN DISTRICT OF COLUMBIA JUDGES

Section 193 of Pub. L. 91–358, provided:

(a) The person serving as judge of the District of Columbia Tax Court on the day prior to the effective date of this title may, within sixty days of such date, elect to retain retirement benefits under section 2 of title IX of the District of Columbia Revenue Act of 1937 (D.C. Code, sec. 47–2402), or relinquish such benefits and elect retirement benefits under chapter 15 of title 11 of the District of Columbia Code, as contained in the revision made by part A of this title.

(b)(1) Any judge of the District of Columbia Court of Appeals, the District of Columbia Court of General Sessions, the Juvenile Court of the District of Columbia, or the former District of Columbia Municipal Court of Appeals or Municipal Court, who had retired prior to the effective date of this subsection, may elect to have his retirement salary recomputed and paid in accordance with this subsection. Such election may be made in writing within sixty days after such effective date and shall be filed with the Commissioner of the District of Columbia.

(2) The retirement salary of each judge making such election shall be recomputed in accordance with applicable law then in effect at the time of his retirement, except that in the recomputation of such retirement salary, the salary of the corresponding judicial office on the day immediately following the effective date of this subsection shall be deemed to be the salary which such judge was receiving immediately prior to the date of his retirement.

(3) Each judge who elects recomputation of his retirement salary in accordance with this subsection shall—

(A) deposit in the District of Columbia Judicial Retirement and Survivors Annuity Fund an amount equal to 3½ per centum of his basic salary received for judicial service, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year; or

(B) have his retirement salary, as recomputed in accordance with this subsection, reduced by 10 per centum of the amount of such deposit remaining unpaid.

(4) The retirement salary of any judge which is recomputed in accordance with this subsection shall be payable only with respect to those months beginning on and after the first day of the first month following the date of the election made by such judge under this subsection.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–1568, 11–1569.

§ 11–1562. Eligibility for retirement

(a) A judge is eligible for retirement under this subchapter when he has completed ten years of judicial service, whether continuous or not, or upon mandatory retirement as provided in section 11–1502.

(b) The retirement salary of a judge who retires shall commence as follows:

(1) With twenty or more years of judicial service, at age fifty.

(2) With less than twenty years of judicial service, at age sixty, unless he elects to receive a reduced salary beginning at age fifty-five or at the date of retirement if subsequent to that age.

(c) A judge with five years or more of judicial service, including civilian service performed by the judge which is creditable under section 8332 of title 5, United States Code, may voluntarily retire for a mental or physical disability which is or is likely to become permanent and which prevents, or seriously interferes with, the proper performance of judicial duties. Such disability shall be established by furnishing to the Commissioner a certificate of disability signed by a duly licensed physician, approved by the Surgeon General of the United States, and containing such information and conclusions as the Commissioner by regulation may require consistent with this subsection.

(d) Eligibility for retirement salary of a judge involuntarily retired for disability under section 11–1526(b) shall not be conditioned upon prior service. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 500.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–1564, 11–1566.

§ 11–1563. Withholding of retirement payments; lump-sum credit

(a) There shall be deducted and withheld from the basic salary of each judge appointed after October 31, 1964, and each judge appointed before November 1, 1964, who has elected to come within the provisions of this subchapter an amount equal to 3½ per centum of his basic salary. Amounts so deducted and withheld shall be deposited in the fund in accordance with procedures established by the Commissioner. Each judge subject to this section shall be deemed to consent and agree to such deductions from basic salary, and payment less such deductions shall constitute a full and complete discharge and acquittance of all claims and demands whatsoever for all regular service during the period covered by such payment, except the right to the benefits to which he shall be entitled under this subsection, notwithstanding any law, rule, or regulation affecting the judge's salary.

(b) If he has not previously so deposited, each judge subject to this section shall deposit in the fund, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year, a sum equal to 3½ per centum of his basic salary received for judicial service performed by him as a judge prior to the date he became subject to the District of Columbia Judges Retirement Act of 1964. Each judge may elect to make such deposits in installments during the continuance of his judicial service in such amounts as may be determined in each instance by the Commissioner. Notwithstanding the failure of any judge to make such deposits, credit shall be allowed for the service rendered but the retirement pay for such judge shall be reduced by 10 per centum of such deposit remaining unpaid unless the judge shall elect to eliminate the service involved for purposes of retirement salary computation, except as provided in section 11–1564(d).

(c) If any judge who is subject to this section is removed, resigns, or fails to be recommissioned or reappointed, he is entitled to be paid his lump-sum credit for retirement if application for payment is filed with the Commissioner at least thirty-one days before the commencing date of any retirement salary for which he is eligible. The receipt of the lump-sum credit for retirement by the judge voids all retirement salary rights under this subchapter, until he is reemployed in judicial service subject to this subchapter.

(d) If a judge who has not elected to bring himself within the survivor annuity provisions of this subchapter dies while in regular active service, the lump-sum credit for retirement shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving him in the order of precedence established in section 11–1569(b). Such payments shall be a bar to recovery by any other person. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 501.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1566.

§ 11–1564. Computation of retirement salary; election to credit other service

(a) The retirement salary of a judge who retires pursuant to section 11–1562 (a) and (b) shall be paid annually in equal monthly installments during the remainder of his life and shall bear the same ratio to his basic salary immediately prior to the date of his retirement as the total of his aggregate years of service bears to the period of thirty years. A judge who elects to receive a reduced retirement salary pursuant to section 11–1562(b)(2) shall have his retirement salary reduced by one-twelfth of 1 per centum for each month or fraction of a month he is under the age of sixty at the time of the commencement of his reduced retirement salary. In no event shall the retirement salary (including the amount provided by subsection (c) of this section) of a judge exceed 80 per centum of his basic salary immediately prior to the date of his retirement.

(b) The retirement salary of a judge retired for disability pursuant to section 11–1526(b) or section 11–1562(c) or (d) shall be paid annually in equal monthly installments during the remainder of his life and shall be computed as provided in subsection (a). If a judge is retired for disability, his retirement salary shall not be reduced because of his age at the time of retirement. In no event shall the retirement salary of a judge retired for disability be less than 50 per centum or exceed 80 per centum of his basic salary immediately prior to the date of his retirement.

(c) In computing the retirement salary of a judge retiring under section 11–1562, the judge shall be entitled, if he so elects during the continuance of his judicial service or at the time of his retirement, to receive, in addition to the amount provided for in

subsection (a) of this section, an amount (payable annually in equal monthly installments during the remainder of his life) based on military and civilian service performed by the judge which is creditable under section 8332 of title 5, United States Code, computed in accordance with section 8339 (a), (b), (c), (d), (g), and (h) of that title, as applicable, subject to the provisions of section 8334 (c) and (d) of that title and the provisions of subsection (d) of this section; except that average pay for the purpose of the computation shall be deemed to be the basic salary of the judge immediately prior to the date of his retirement under section 11–1562.

(d) (1) The crediting of service with respect to any judge under subsection (c) of this section shall be made on the standard basis of a deposit in the sum equal to 3½ per centum of his basic salary, pay, or compensation for civilian service creditable under section 8332 of title 5, United States Code, with interest as provided in paragraph (2) of this subsection.

(2) Interest on deposits under this subsection is computed from the midpoint of each service period included in the computation to the date of deposit or the commencing date of the retirement salary of the judge, whichever date is the earlier. Interest is computed at the rate of 4 per centum a year to December 31, 1947, and 3 per centum a year thereafter, compounded annually. Interest may not be charged for a period of separation from the service which began before October 31, 1956.

(3) Deposit under this subsection may not be required for—

(A) service before August 1, 1920;

(B) military service; or

(C) service for the Panama Railroad Company before January 1, 1924.

(4) If a judge elects to be credited with service under subsection (c) of this section, his lump-sum credit, or any remaining balance thereof, in the Civil Service Retirement and Disability Fund or in the retirement fund of any other retirement system for civilian employees of the Government of the United States or the District of Columbia, shall be transferred to the District of Columbia Judicial Retirement and Survivors Annuity Fund. The judge shall be deemed to consent to the transfer. The transfer shall be a complete discharge and acquittance of all claims and demands against the retirement system from which the funds were transferred on account of the service so credited.

(5) A judge whose lump-sum credit is transferred to the fund under paragraph (4) of this subsection is not required to make deposits in addition to the amount transferred for periods of service for which full contributions were made to the retirement system from which the transfer was made.

(6) In the case of a judge whose lump-sum credit has been transferred to the fund under paragraph (4) of this subsection and who has not elected a survivor annuity under section 11–1566, or prior corresponding provision of law, the Commissioner shall refund to the judge any amount which the Commissioner determines to be in excess of the amount of the deposit required by this subsection. In the case of a judge whose lump-sum credit has been transferred to the fund under paragraph (4) of this subsection and who, prior to the effective date of this section, had elected a survivor annuity and made deposits to the fund for survivor annuity purposes, the Commissioner shall refund to the judge any amount which the Commissioner determines in excess of the amount of the deposit required by section 11–1567.

(7) If any civilian service performed by the judge which is creditable under section 8332 of title 5, United States Code, is not covered by the amount of the lump-sum credit transferred under paragraph (4) of this subsection, the judge may make deposit, on the standard basis prescribed by paragraph (1) of this subsection, with interest as provided in paragraph (2) of this subsection, in accordance with and subject to the applicable provisions of section 8334 (c) and (d) of that title, of the amount or amounts necessary for him to receive full credit for that service for the purposes of subsection (c) of this section. The deposit may be made, as the judge may elect, in installments, during the continuance of his judicial service, in such amounts as the Commissioner may determine in each instance, or in a lump sum prior to or at the time of his retirement under section 11–1562. A judge electing to make installment deposits shall not be given full credit for the service until the total required deposit is made.

(8) For the purpose of survivor annuity, deposits authorized by this subsection also may be made by the survivor of a judge.

(e) Nothing in this subchapter shall prevent a judge eligible therefor from simultaneously receiving his retirement salary under this section and any annuity or retired pay to which he would otherwise be entitled under any other law without regard to this subchapter. However, in computing the retirement salary of a judge under this section, service used in the computation of such other annuity shall not be credited. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 501.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–1563, 11–1566, 11–1567.

§ 11–1565. Service by retired judges

Any retired judge performing full-time judicial duties on the District of Columbia Court of Appeals or the Superior Court shall be entitled, during the period for which he serves, to receive the salary of the office in which he performs such duties, but there shall be deducted from such salary an amount equal to his retirement salary for that period. No deduction shall be withheld for health benefits, Federal employee's life insurance, or retirement purposes from the salary paid to a retired judge during judicial service. The performance of such judicial service shall not create an additional retirement, change a retirement, or create or in any manner affect a survivor annuity. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 503.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–1566, 11–1567.

§ 11–1566. Survivor annuity; election; relinquishment

(a) Any judge, whether or not subject to sections 11–1562 to 11–1565, may, by written election filed with the Commissioner within six months after the date on which he takes office or is reappointed or recommissioned, or within six months after he marries, bring himself within the survivor annuity provisions of this subchapter.

(b) Any judge in regular active service or any retired judge, who shall have elected survivor annuity, and who after that election is unmarried and does not have a dependent child, may elect—

(1) to terminate the deductions and withholdings from his salary under section 11–1567(a) and any installment payments elected to be made under section 11–1567(b); and

(2) to have paid to him the lump-sum credit for survivor annuity.

Any election under this subsection shall be made in writing and filed with the Commissioner.

(c) If any judge who shall have elected survivor annuity resigns from office otherwise than under the provisions of this subchapter or is removed, he shall be entitled to be paid the lump-sum credit for survivor annuity.

(d) Payment of the lump-sum credit for survivor annuity as provided in this section shall extinguish all claims with respect to survivor annuity. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 503.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–1564, 11–1569.

§ 11–1567. Survivor annuity; payments to fund

(a) There shall be deducted and withheld from the salary (whether basic or retirement) of each judge who has elected survivor annuity a sum equal to 3 per centum of that salary. The amounts so deducted and withheld shall, in accordance with such procedures as may be prescribed by the Commissioner, be deposited in the fund. Every judge who elects survivor annuity shall be deemed thereby to consent and agree to the deductions from his salary as provided in this subsection, and payment less such deductions shall constitute a full and complete discharge and acquittance of all claims and demands whatever for all judicial services rendered by such judge during the period covered by such payment, except the right to the benefits to which he or his survivors shall be entitled under the survivor annuity provisions of this subchapter.

(b) If he has not previously so deposited, each judge who has elected survivor annuity shall deposit to the fund, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year, a sum equal to 3 per centum of his salary received for judicial service and of retirement salary (but excluding salary for judicial service under section 11–1565); and a sum equal to 3 per centum of his basic salary, pay, or compensation for civilian service creditable under section 8332 of title 5, United States Code, with interest as provided in section 11–1564(d). Except to the extent that the Commissioner has made refund to the judge under section 11–1564(d)(6), deposit is not required with respect to that portion of the service of the judge covered by the transfer, under section 11–1564(d)(4), of his lump-sum credit to the fund. In addition, deposit may not be required for the types of service described in section 11–1564(d)(3). Each judge may elect to make deposits under this subsection in installments during the continuance of his judicial service in such amounts as may be determined in each instance by the Commissioner. Deposits under this subsection also may be made by the survivor of a judge.

(c) If a judge or survivor fails to make such deposits, credit shall be allowed for the service, but the annuity of the widow or widower of such judge shall be reduced by an amount equal to 10 per centum of the deposit required by this section, computed as of the date of the death of the judge, unless the widow or widower elects to eliminate the service not covered by deposit entirely from credit for computation purposes except as provided in section 11–1564(d)(3). (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 504.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–1564, 11–1566, 11–1568, 11–1569.

§ 11–1568. Survivor annuity; entitlement; computation.

(a) The service of a judge for the purpose of computing a survivor annuity includes his judicial service (and retired service for which deductions are made) and, subject to section 8334(d) of title 5, United States Code, his military and civilian service which is creditable under section 8332 of that title.

(b) Nothing in this subchapter shall prevent a widow or widower eligible therefor from simultaneously receiving a survivor annuity under this subchapter and any other annuity (survivor or otherwise) or retired pay to which he or she would otherwise be entitled under any other law without regard to this subchapter. However, in computing the survivor annuity of that widow or widower under this subchapter, service used in the computation of such other annuity shall not be credited.

(c) If a judge who has elected a survivor annuity dies in regular active service or after having retired from such service with at least five years of allowable service under this section for which payments have been withheld or deposits made, the survivor annuity shall be paid as follows:

(1) If the judge is survived by a widow or widower but no child, the widow or widower shall receive, beginning on the day after the judge dies, an amount computed as provided in subsection (e).

(2) If the judge is survived by a widow or widower and one or more children—

(A) the widow or widower shall receive an immediate annuity in the amount computed as provided in subsection (e); and

(B) there also shall be paid to or on behalf of each such child an immediate annuity equal to one-half the amount of the annuity of such widow or widower, but not to exceed the lesser of (i) $2,700 per year divided by the number of such children or (ii) $900 per child per year.

(3) If the judge leaves no surviving widow or widower but leaves a surviving child or children, there shall be paid to or on behalf of each such child an immediate annuity equal to the amount of the annuity to which the widow or widower would have been entitled under paragraph (1) of this subsection had he or she survived, but not to exceed the lesser of (A) $3,240 per year divided by the number of children or (B) $1,080 per child per year.

An annuity payable to a widow or widower under this section shall be terminable upon death or remarriage. The annuity payable to a child shall be terminable upon his death or marriage or his ceasing to be a child as defined in section 11–1561(8). In case of the death of a widow or widower of a judge leaving a child or children of the judge surviving, the annuity of such child or children shall be recomputed and paid as provided in paragraph (3) of this subsection. In any case in which the annuity of a child is terminated, the annuities of any remaining child or children, based upon the service of the same judge, shall be recomputed and paid as though the child whose annuity was terminated had not survived the judge.

(d) Questions of disability or other eligibility requirements of a child under this section shall be determined by the Commissioner who may order such medical or other examinations at any time as he deems necessary with respect to determining the facts concerning the disability of a child receiving or applying for an annuity under this subchapter. An annuity may be denied or suspended for failure to submit to examination.

(e) The annuity of a widow or widower of a judge electing survivor annuity shall be an amount equal to the sum of—

(1) 1¼ per centum of the average annual salary received for service allowable under subsection (a) during the last three years of such service prior to death or retirement multiplied by the sum of his years of judicial service and his Member, congressional employee, and his military service allowable under subsection (a); and

(2) three-fourths of 1 per centum of such average annual salary multiplied by his years of all other civilian service allowable under subsection (a).

A survivor annuity shall not exceed 44 per centum of the average annual salary described in paragraph (1) of this subsection and shall be subject to reduction as provided in section 11–1567(c). (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 504.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1569.

§ 11–1569. Survivor annuity; payment; order of precedence

(a) Survivor annuities shall accrue monthly and shall be due and payable in monthly installments on the first business day of the month following the month or other period for which the annuity shall have accrued.

(b) In any case in which—

(1) a judge who has elected survivor annuity shall die (A) while in regular active service after having rendered five years of allowable service as provided in section 11–1568(a) or while receiving retirement salary under this subchapter but without a survivor or survivors entitled to annuity under section 11–1568(c) or (B) while in regular active service but before having rendered five years of allowable service; or

(2) the right of all persons entitled to an annuity under section 11–1568(c) based on the service of the judge shall terminate before a valid claim therefor shall have been established;

the lump-sum credit shall be paid, upon the establishment of a valid claim therefor, to the person or persons surviving at the date title to the payment arises, in the following order of precedence, and such payment shall be a bar to recovery by any other person:

First, to the beneficiary or beneficiaries whom the judge may have designated in writing to the Commissioner prior to the judge's death;

Second, if there be no such beneficiary, to the widow or widower of the judge;

Third, if none of the above, to the child or children of the judge and the descendants of any deceased children by representation;

Fourth, if none of the above, to the parents of the judge or the survivor of them;

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of such judge;

Sixth, if none of the above, to such other next of kin of the judge as may be determined by the Commissioner to be entitled under the laws of the domicile of the judge at the time of his death.

Determination as to the widow, widower, or child of a judge for purposes of this subsection shall be made by the Commissioner without regard to the definitions in section 11–1561.

(c) In any case in which the annuities of all persons entitled to annuity based upon the service of a judge shall terminate before the aggregate amount of annuity paid (together with any amounts received by the judge as retirement salary) equals the total amount credited to the individual account of the judge, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year, to the date of the death of such judge, the difference shall be paid upon establishment of a valid claim therefor, in the order of precedence prescribed in subsection (b).

(d) Any accrued annuity remaining unpaid upon the termination (other than by reason of death) of the annuity of any person based upon the service of a judge shall be paid to such person. Any accrued annuity remaining unpaid upon the death of any person receiving an annuity based upon the service of a judge shall be paid, upon establishment of a valid claim therefor, in the following order of precedence:

First, to the duly appointed executor or administrator of the estate of the annuitant;

Second, if there is no such executor or administrator, payment may be made, after the expiration of thirty days from the date of death of the annuitant, to such person or persons as may appear in the judgment of the Commissioner to be legally entitled thereto, and such payments shall be a bar to recovery by any other person.

(e) Where any payment under sections 11–1566 to 11–1569 is to be made to a minor or to a person mentally incompetent or under other legal disability adjudged by a court of competent jurisdiction, such payment may be made to the person who is constituted guardian or other fiduciary by the law of the jurisdiction wherein the claimant resides or is otherwise legally vested with the care of the claimant or his estate. Where no guardian or other fiduciary of the person under legal disability has been appointed under the laws of the jurisdiction wherein the claimant resides, payment may be made to any person who, in the judgment of the Commissioner, is responsible for the care of the claimant, and the payment bars recovery by any other person. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 506.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1563.

§ 11–1570. Retirement and annuity fund

(a) The District of Columbia Judicial Retirement and Survivors Annuity Fund is hereby continued in the Treasury and appropriated for the payment of retirement salaries, annuities, refunds, and allowances as provided in this subchapter. If at any time the balance of the fund is insufficient to pay current obligations arising under this subchapter, there is authorized to be appropriated to the fund, out of any moneys in the Treasury of the United States to the credit of the District of Columbia not otherwise appropriated, such amounts as may be necessary to pay current obligations. The Secretary of the Treasury shall prepare the estimates of the annual appropriations required to be made to the fund, and shall make actuarial evaluations of the fund at intervals of five years or more if deemed necessary by the Secretary.

(b) The Secretary shall invest, from time to time, in interest-bearing securities of the United States or Federal farm loan bonds, any portions of such funds as in his judgment may not be immediately required for payments from the fund and the income derived from such investments shall constitute a part of the fund.

(c) All amounts deposited by, or deducted and withheld from the salary of, any judge for credit to the fund shall, under regulations prescribed by the Commissioner, be credited to an individual account of the judge.

(d) None of the moneys mentioned in this subchapter shall be assignable, either in law or in equity, or be subject to execution, levy, attachment, garnishment, or other legal process. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 507.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1561.

§ 11–1571. Periodic increases; existing rights

(a) The retirement salary of any judge, or the annuity of any person based upon the service of a judge, who, on the effective date of any increase which, after the effective date of this section, becomes payable under the provisions of section 8340 (b) of title 5, United States Code, is receiving such salary or annuity (1) under the provisions of this subchapter, or (2) under the provisions of section 11–1701, as in effect prior to the effective date of this section, and its predecessor laws, shall be increased on the effective date of the increase by a percentage equal to the percentage of such increase under section 8340 of title 5, United States Code.

(b) Nothing in this subchapter shall defeat or diminish rights acquired under section 11–1701, as in effect prior to the effective date of this section, and its predecessor laws, except on the election and with the consent of the judge, annuitant, or other person affected. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 507.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 17.—ADMINISTRATION OF DISTRICT OF COLUMBIA COURTS

SUBCHAPTER I.—COURT ADMINISTRATION

Sec.
11–1701. Administration of District of Columbia court system.
11–1702. Responsibilities of chief judges in the respective courts.
11–1703. Executive Officer of the District of Columbia courts; appointment; compensation.
11–1704. Oath and bond of the Executive Officer.

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11–1722. Director of Social Services.
11–1723. Fiscal Officer.
11–1724. Auditor-Master.
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SUBCHAPTER III.—DUTIES AND RESPONSIBILITIES

11–1741. Court operations and organization.
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CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–906, 11–2105.

SUBCHAPTER I.—COURT ADMINISTRATION

§ 11–1701. Administration of District of Columbia court system

(a) There shall be a Joint Committee on Judicial Administration in the District of Columbia (here-

after in this chapter referred to as the "Joint Committee") consisting of (1) the Chief Judge of the District of Columbia Court of Appeals, who shall serve as Chairman, (2) an associate judge of that court elected annually by the judges thereof, (3) the Chief Judge of the Superior Court, and (4) two associate judges of that court elected annually by the judges thereof.

(b) The Joint Committee shall have responsibility within the District of Columbia court system for the following matters:

(1) General personnel policies, including those for recruitment, removal, compensation, and training.

(2) Accounts and auditing.

(3) Procurement and disbursement.

(4) Submission of the annual budget requests of the District of Columbia Court of Appeals and the Superior Court to the Commissioner of the District of Columbia as the integrated budget of the District of Columbia court system, except that such requests may be modified upon the concurrence of four of the five members of the Joint Committee.

(5) Approval of the bonds of fiduciary employees within the District of Columbia court system.

(6) Formulation and enforcement of standards for outside activities of and receipt of compensation by the judges of the District of Columbia court system.

(7) Development and coordination of statistical and management information systems and reports supporting the annual report of the District of Columbia court system.

(8) Liaison between the District of Columbia court system and the court systems of other jurisdictions, including the Judicial Conference of the United States, the Judicial Conference of the District of Columbia Circuit, and the Federal Judicial Center.

(9) With the concurrence of the respective chief judges of the District of Columbia courts, other policies and practices of the District of Columbia court system and resolution of other matters which may be of joint and mutual concern of the District of Columbia Court of Appeals and the Superior Court.

(c) The Joint Committee, with the assistance of the Executive Officer of the District of Columbia courts, shall—

(1) consider and evaluate the business of the courts and means of improving the administration of justice within the District of Columbia court system and shall report thereon in its annual report;

(2) prepare and publish an annual report of the District of Columbia court system regarding the work of the courts, the performance of the duties enumerated in this chapter, and of any recommendations relating to the courts;

(3) recommended from time to time to the Congress changes in the organization, jurisdiction, operation, and procedures of the courts which are appropriate for legislative action, and institute such changes, pursuant to the responsibilities enumerated in subsection (b), in the methods of administering judicial business in the court system as would improve the administration of justice; and

(4) arrange for such training seminars, and other related services, as are desirable and feasible for judges and other court personnel, including services from the Federal Judicial Center on a reimbursable basis.

(d) The Joint Committee shall have authority to issue all orders and directives necessary to implement the responsibilities and duties enumerated in this section. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 508.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–1571, 11–1702, 11–1703.

§ 11–1702. Responsibilities of chief judges in the respective courts

(a) The Chief Judge of the District of Columbia Court of Appeals, in addition to the authority conferred on him by chapter 7 of this title, shall supervise the internal administration of that court—

(1) including all administrative matters other than those within the responsibility enumerated in section 11–1701(b), and

(2) including the implementation in that court of the matters enumerated in section 11–1701(b), consistent with the general policies and directives of the Joint Committee.

(b) The Chief Judge of the Superior Court, in addition to the authority conferred on him by chapter 9 of this title, shall supervise the internal administration of that court—

(1) including all administrative matters other than those within the responsibility enumerated in section 11–1701(b), and

(2) including the implementation in that court of the matters enumerated in section 11–1701(b), consistent with the general policies and directives of the Joint Committee. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 509.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–1703. Executive Officer of the District of Columbia courts; appointment; compensation

(a) There shall be an Executive Officer of the District of Columbia courts (hereafter in this chapter referred to as the "Executive Officer"). He shall be responsible for the administration of the District of Columbia court system subject to the supervision of the Joint Committee and the chief judges of the respective courts as provided in this chapter. He shall be subject to the supervision of the Joint Committee regarding administrative matters that are enumerated in section 11–1701(b). He shall be subject to the supervision of the chief judges in their respective courts: (1) regarding all administrative matters other than those within the responsibility enumerated in section 11–1701(b), and (2) regarding the

implementation in the respective courts of the matters enumerated in section 11–1701(b), consistent with the general policies and directives of the Joint Committee.

(b) The Executive Officer shall be selected by, and subject to removal by, the Joint Committee with the concurrence of the respective chief judges. He shall be selected from a list of at least three qualified persons, submitted by the Director of the Administrative Office of the United States Courts.

(c) The Executive Officer shall receive the same compensation as an associate judge of the Superior Court. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 510.)

§ 11–1704. Oath and bond of the Executive Officer

(a) The Executive Officer shall take an oath or affirmation for the faithful and impartial discharge of the duties of his office.

(b) The Executive Officer shall give bond, with two or more sureties, to be approved by the Joint Committee, in an amount prescribed by the Joint Committee, faithfully to discharge the duties of his office. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 510.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SUBCHAPTER II.—COURT PERSONNEL

§ 11–1721. Clerks of courts

The District of Columbia Court of Appeals and the Superior Court shall each have a clerk who shall perform such duties as may be assigned to him. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 510.)

§ 11–1722. Director of Social Services

(a) There shall be a Director of Social Services in the Superior Court who shall have charge of all social services for the Superior Court, subject to the supervision of the Executive Officer. With respect to adults, he shall provide probation services, intake procedures, marital and family counseling, social casework, rehabilitation and training programs, and such other services as the court shall prescribe. With respect to juveniles, he shall provide intake procedures, counseling, education and training programs, probation services, and such other services as the court shall prescribe.

(b) To the maximum extent feasible, the Director shall coordinate with and utilize the services of appropriate public and private agencies within the District of Columbia, and shall coordinate and provide administrative services to volunteers utilized by the Superior Court or any divisions thereof.

(c) As directed by the Executive Officer, the Director shall conduct studies and make reports relating to the utilization of social services as an adjunct to the Superior Court.

(d) The Director shall make recommendations with respect to the consolidation or disposition of causes before the court relating to members of the same family or household. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 511.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–2336.

§ 11–1723. Fiscal Officer

(a)(1) There shall be a Fiscal Officer in the District of Columbia court system who shall be responsible for the budget of the court system and for the accounts of the courts, subject to the supervision of the Executive Officer.

(2) The Fiscal Officer shall receive, safeguard, and account for all fees, costs, payments, and deposits of money or other items, and shall be responsible for depositing in the Treasury of the United States all fines, forfeitures, fees, unclaimed deposits, and other moneys.

(3) The Fiscal Officer shall be responsible for the approval of vouchers and the internal auditing of the accounts of the courts and shall arrange for an annual independent audit of the accounts of the courts by the District of Columbia government.

(b) The Fiscal Officer shall give bond with two or more sureties, to be approved by the Joint Committee, in an amount prescribed by the Joint Committee, faithfully to discharge the duties of his office. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 511.)

§ 11–1724. Auditor-Master

There shall be an Auditor-Master of the Superior Court who shall (1) audit and state fiduciary accounts, (2) execute orders of reference referred by the Superior Court and perform duties in connection with the execution of such orders in accordance with Rule 53 of the Federal Rules of Civil Procedure or other applicable rule, and (3) perform such other functions as may be assigned by the Superior Court. The Auditor-Master shall give bond faithfully to discharge the duties of his office. The bond shall have two or more sureties to be approved by the chief judge of the Superior Court, and shall be in an amount prescribed by him. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 511.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–1725. Appointment of nonjudicial personnel

(a) Subject to the approval of the Joint Committee, the Executive Officer shall appoint, and may remove, the Fiscal Officer, and such other personnel whose principal function is to perform duties for both District of Columbia courts.

(b) The Executive Officer shall appoint, and may remove, the Director of Social Services, the clerks of the courts, the Auditor-Master, and all other nonjudicial personnel for the courts (other than the Register of Wills and personal law clerks and secretaries of the judges) as may be necessary, subject to—

(1) regulations approved by the Joint Committee; and

(2) the approval of the chief judge of the court to which the personnel are or will be assigned.

Appointments and removals of court personnel shall not be subject to the laws, rules, and limitations

applicable to District of Columbia employees, except as otherwise specified in the District of Columbia Court Reorganization Act of 1970. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 511.)

§ 11–1726. Compensation

In the case of nonjudicial employees of the District of Columbia courts whose compensation is not otherwise fixed by this title, the Executive Officer shall fix the rates of compensation of such employees without regard to chapter 51 and subchapter III of chapter 53 of title 5, United States Code, and such rates shall not exceed the maximum rate prescribed for GS–15 of the General Schedule, except that the Executive Officer may fix the rates of compensation of—

(1) 5 positions at not to exceed the maximum rate prescribed for GS–16 of the General Schedule; and

(2) 2 positions at not to exceed the maximum rate prescribed for GS–17.

In fixing the rates of nonjudicial employees under this section, the Executive Officer shall be guided by the rates of compensation fixed for other employees in the executive and judicial branches of the Federal and District of Columbia Governments occupying the same or similar positions or occupying positions of similar responsibility, duty, and difficulty. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 511.)

§ 11–1727. Court reporters

(a) The Executive Officer shall appoint reporters who shall be full-time employees of the courts. When necessary, the Executive Officer may contract for additional temporary reporting services. Nothing in this section shall be construed to preclude the Superior Court of the District of Columbia from providing by rule for the sound recording of proceedings in lieu of mechanical (audio or manual) transcription in any branch, division or courtroom of the court. Court reporters, shall, in addition to being subject to the general supervision of the Executive Officer, be subject to the supervision of the chief judges of the courts and of the other District of Columbia judges for whom they perform services, regarding the performance of their duties in the respective courts.

(b) In addition to their annual salaries, court reporters may charge and collect from parties, including the United States and the District of Columbia, who request transcripts of the original records of proceedings, only such fees as may be prescribed from time to time by the Executive Officer. The reporters shall furnish all supplies at their own expense. The Executive Officer shall prescribe such rules, practice, and procedure pertaining to fees for transcripts as he deems necessary, conforming as nearly as practicable to the rules, practice, and procedure established for the United States District Court for the District of Columbia. A fee may not be charged or taxed for a copy of a transcript delivered to a judge at his request or for copies of a transcript delivered to the clerk of a court for the records of the court. Except as to transcripts that are to be paid for by the United States or the District of Columbia, the reporters may require a party requesting a transcript to prepay the estimated fee therefor in advance of delivery of the transcript. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 512.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 11–935 in 1967 Edition]

Transcripts

Under this section imposing duty to equate rules, practice and procedure relating to fees for transcripts in Court of General Sessions as nearly as practicable to those in United States District Court for District of Columbia and 28 U.S.C. 753 determining litigant's eligibility for free transcript in district court, and on proper certification by judge, the United States must pay for transcripts or essential portions thereof for indigent litigants allowed to appeal in forma pauperis to District of Columbia Court of Appeals. *O. Lee* v. *N. Habib* (1970, 424 F. 2d 891, 137 U.S. App. D.C. 403).

Doubts about substantiality of the questions on indigents' appeal and need for transcript at government expense to explore them should be resolved in favor of indigents. *Id.*

Judges should give due consideration to indigents' motions for transcripts in cases where the law appears to be settled but where appellant is able to show that his chances of changing the law on appeal are strong. *Id.*

Since, by motion for transcript, public funds may be expended for that purpose, a copy of motion for transcript should be served on United States attorney. *J. McKelton* v. *J. E. Bruno* (D.C. App. 1970, 264A. 2d 493).

§ 11–1728. Recruitment and training of personnel

The Executive Officer shall be responsible for recruiting such qualified personnel as may be necessary for the District of Columbia courts and for providing in-service training for court personnel. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 512.)

§ 11–1729. Service of United States marshal

The United States Marshal for the District of Columbia shall continue to serve the courts of the District of Columbia, subject to the supervision of the Attorney General of the United States. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 512.)

§ 11–1730. Reports of court personnel

(a) Judges of the courts shall furnish time and attendance records pursuant to sections 11–709 and 11–909 to the respective chief judges, with a copy to the Executive Officer.

(b) All nonjudicial personnel of the courts shall furnish such reports and information to the Executive Officer as he shall request. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 512.)

§ 11–1731. Reports of other personnel

The Executive Officer or the chief judge may request such reports as may be necessary to the efficient administration of the courts from—

(1) the United States Attorney for the District of Columbia,

(2) the Corporation Counsel,

(3) the United States Marshal for the District of Columbia,

(4) the Commissioner of the District of Columbia,

(5) the superintendent of any hospitals or institutions to which persons have been committed by the Superior Court,

(6) the District of Columbia Public Defender Service,

(7) the District of Columbia Bail Agency,

(8) the District of Columbia Department of Corrections,

(9) the Chief of the Metropolitan Police Department,

(10) the District of Columbia Department of Public Health, and

(11) the District of Columbia Department of Public Welfare.

These officials, agencies, and departments shall furnish such reports and information as may be requested pursuant to this section. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 513.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SUBCHAPTER III.—DUTIES AND RESPONSIBILITIES

§ 11–1741. Court operations and organization

Within the respective District of Columbia courts, and subject to the supervision of the chief judges thereof, the Executive Officer shall—

(1) supervise, analyze, and improve case assignments, calendars, and dockets;

(2) provide improved services and introduce new methods to better utilize the time of and accommodate government and other witnesses;

(3) supervise, analyze, and improve the management of jurors;

(4) recommend changes and improvements in court rules and procedures affecting his administrative responsibilities;

(5) report periodically to the appropriate chief judge with respect to case volumes, backlogs, length of time cases have been pending, number and identity of incarcerated defendants awaiting trial, and such other information as the respective chief judges may request;

(6) mechanize and computerize court operations and services where feasible and desirable and carry on continuing studies and evaluations of increased and innovative uses of mechanization and computerization;

(7) conduct studies and research with respect to court operations on his own initiative or on request of the respective chief judges;

(8) make recommendations to the chief judge of the Superior Court relating to the arrangement and division of the business of that court and the fixing of the time of sessions of the various divisions and branches of that court; and

(9) perform such other duties as may be assigned to him by a chief judge. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 513.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–1742. Property and disbursement

(a) The Executive Officer shall be responsible, subject to the supervision of the Joint Committee, for the management of such buildings and space as may be assigned to the courts and shall maintain liaison with the appropriate Federal and District of Columbia officials with respect thereto.

(b) The Executive Officer shall be responsible for the procurement of necessary equipment, supplies, and services for the courts and shall have power, subject to applicable law, to reimburse the District of Columbia government for services provided and to contract for such equipment, supplies, and services as may be necessary.

(c) The Executive Officer shall serve as disbursing officer and payroll officer of the District of Columbia courts and shall assign and distribute necessary equipment and supplies. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 513; Dec. 7, 1970, Pub. L. 91–530, § 2(a)(7), 84 Stat. 1390.)

AMENDMENTS

1970—Section 2(a)(7) of act Dec. 7, 1970, Pub. L. 91–530, amended subsec. (a) by striking out "mav be assigned" and inserting in lieu thereof "may be assigned".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–530

See sec. 2(d) of Pub. L. 91–530, set out as a note under § 11–921.

§ 11–1743. Annual budget

(a) The Joint Committee shall prepare and submit to the Commissioner of the District of Columbia annual estimates of the expenditures and appropriations necessary for the maintenance and operations of the District of Columbia court system.

(b) All such estimates shall be forwarded to the Bureau of the Budget by the District of Columbia without revision, but subject to the recommendations of the District of Columbia. Similarly, all estimates shall be included in the budget without revision by the President but subject to his recommendations. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 514.)

CHANGE OF NAME

The "Bureau of the Budget" was changed to "Office of Management and Budget" by section 102(a) of Reorganization Plan No. 2 of 1970, 84 Stat. —.

§ 11–1744. Information and liaison services

The Executive Officer shall be responsible for—

(1) collecting and compiling statistical information with respect to the volume and disposition of the work of the courts and the personnel of the courts;

(2) printing and the distribution of court rules;

(3) keeping the courts advised of pending legislative and executive actions relating to the courts;

(4) serving as the public information officer of the courts; and

(5) performing such other duties as may be assigned to him by the Joint Committee and the chief judges in their respective courts.

(July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 514.)

§ 11–1745. Reports and records

(a) The Executive Officer shall prepare and publish, subject to the approval of the Joint Committee, the annual report of the District of Columbia court

system of the work of the courts and their operations during the preceding year together with any recommendations relating to the courts. The principal purpose of the annual report shall be to provide meaningful and objective information concerning the performance, progress, and problems of the District of Columbia courts. The report shall include narrative comments analyzing the significance of statistical data and shall show trends with regard to the work of such courts, current data on the age and type of pending cases, and methods of disposition of cases. Nothing in this chapter shall prevent the respective chief judges from preparing and publishing any other reports as they may wish.

(b) The Executive Officer shall be responsible for maintaining and safeguarding the records of the courts. Except for those records required by law to be kept under court seal, he shall make the records available at all reasonable times to—

(1) the United States Department of Justice,

(2) the Commissioner of the District of Columbia,

(3) the District of Columbia Commission on Judicial Disabilities and Tenure, and

(4) such other agencies as the Joint Committee may specify.

(July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 514.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–1746. Certification of copies of papers or documents filed in District of Columbia Courts

The Executive Officer shall provide that, if any person filing any paper or document in a District of Columbia court requests a certification of such filing, a copy of such paper or document provided by such person shall be appropriately marked for such person to show the time and date of such filing and the identity of the individual with whom such paper or document was filed. Such certified copy shall be prima facie evidence in any proceeding that the original of such paper or document was filed as shown by the certification. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 515.)

§ 11–1747. Delegation of authority

The Executive Officer and court officers appointed by him may delegate to their subordinates authority and responsibility to perform the functions vested in them by law. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 515.)

Chapter 19.—JURIES AND JURORS

Sec.
11–1901. Qualifications of jurors.
11–1902. Single jury selection system.
11–1903. Grand jury; additional grand jury.
11–1904. Assignment of jury panels.
11–1905. Length of service.
11–1906. Fees of jurors.

§ 11–1901. Qualifications of jurors

Jurors serving within the District of Columbia shall have the same qualifications as provided for jurors in the Federal courts. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 515.)

CROSS REFERENCE

For qualifications for jurors in the Federal Courts, see 28 U.S.C. 1865.

§ 11–1902. Single jury selection system

There shall be a single system in the District of Columbia for the selection of jurors for both Federal and District of Columbia courts. The selection system shall be that prescribed by Federal law and executed in accordance therewith as provided by the United States District Court for the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 515.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CROSS REFERENCE

For Federal law prescribing selection system, see 28 U.S.C. 1861 et seq.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also title 11, chapter 23 in 1967 Edition]

Additional jurors

Even if district court should have foreseen that additional names might be necessary to obtain a jury for case and either increased jury call for that month or held case over until next month, trial judge had power to request additional jurors in view of circumstances. *R. G. Baker* v. *United States* (1968, 401 F. 2d 958, 131 U.S. App. D.C. 7).

Although additional jurors were not placed in general pool until after defendant's jury was drawn, it was no reversible error, where processing of additional jurors, with exception that defendant's name was mentioned to five veniremen who were not ultimately selected, was in accord with normal procedures. *Id.*

Failure to draw jurors ten days before trial in compliance with District of Columbia statute did not require reversal without a showing of prejudice. *Id.*

Drawing of additional jurors

That names of additional prospective jurors were not drawn ten days prior to term was not prejudicial to defendant. *United States* v. *R. G. Baker* (1967, 266 F. Supp. 461).

Impartial jury

Where on voir dire only those jurors were excluded who could not under any circumstances render verdict of guilty with death penalty and one juror who was opposed to death penalty was seated and actually served, defendants sentenced under Federal Youth Corrections Act, after being found guilty of carnally knowing female under 16 years of age, were not entitled to reversal of conviction on ground that jury was not impartial. *J. Bailey and R. Humphries* v. *United States* (1968, 405 F. 2d 1352, 132 U.S. App. D.C. 82).

Jury commissioners' discretion

Jury commissioners must exercise discretion since code merely establishes minimum requirements for prospective grand jurors. *United States* v. *B. Haywood* (1968, 289 F. Supp. 479).

Method of selection of juries

Process of selection of grand jury that excused any woman who in her response to questionnaire stated she did not wish to serve, though her willingness was encouraged, without showing intentional, systematic, arbitrary or unreasonable exclusion of women, did not result in grand jury unlawfully constituted. *United States* v. *B. Haywood* (1968, 289 F. Supp. 479).

Inclusion of persons who maintain voting residences outside District of Columbia, when in fact all 23 members of particular grand jury in question did not vote elsewhere, did not show impropriety in selection of grand jury. *Id.*

Production of prior records

Enforcement of subpoena duces tecum on jury commissioners to obtain records going back many years relating to thousands of questionnaire responses in order to show that grand jury was unlawfully constituted, while new jury selection system under new act was about to go into effect, was not justified or necessary. *United States* v. *B. Haywood* (1968, 289 F. Supp. 479).

Qualifications

Before granting new trial on ground that prospective juror failed to disclose material fact during examination as to his qualifications, it must be shown to court's satisfaction that juror deliberately attempted to deceive court by intentionally concealing facts reasonably called for by question and that defendant was prejudiced thereby. *United States* v. *R. G. Baker* (1967, 266 F. Supp. 461).

Where prospective juror who was lieutenant in reserve of metropolitan police for District of Columbia previously had been told by a judge that he was not a police officer, and was not at time of voir dire questioning a special police officer and he was not paid by the District, his failure to respond to questions as to whether he was connected with police department of District, a special police officer, or employee of District was not basis for new trial, in absence of showing of prejudice to defendant. *Id.*

Questionnaire to prospective jurors

Questions in questionnaire used in selection of grand jury as to whether person had ever been arrested or had any views opposed to form of government established by United States Constitution elicited pertinent information and did not render grand jury unlawfully constituted in contravention of Constitution. *United States* v. *B. Haywood* (1968, 289 F. Supp. 479).

In order to show that questions asked on questionnaire used to select grand jurors rendered grand jury unlawfully constituted, a defendant must establish more than fact that such questions were asked and must also show the use to which such answers were put and the purpose underlying them. *Id.*

Systematic exclusion of class or group

Defendant failed to demonstrate that any specific class or group had been systematically excluded by jury commissioners or that there had been any exclusion at all of persons qualified to act as jurors, in proceeding wherein defendant contended he was entitled to new trial on basis that court had erred when it denied his motion to strike jury panel. *United States* v. *R. G. Baker* (1967, 266 F. Supp. 461).

§ 11–1903. Grand jury; additional grand jury

(a) A grand jury serving in the District of Columbia may take cognizance of all matters brought before it regardless of whether an indictment is returnable in the Federal or District of Columbia courts.

(b) If the United States Attorney for the District of Columbia certifies in writing to the chief judge of the United States District Court for the District of Columbia, or the chief judge of the Superior Court, that the exigencies of the public service require it, the judge may, in his discretion, order an additional grand jury summoned, which shall be drawn at such time as he designates. Unless sooner discharged by order of the judge, the additional grand jury shall serve until the end of the term for which it is drawn. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 515.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–1904. Assignment of jury panels

The names of persons to serve as jurors in the United States District Court for the District of Columbia and the Superior Court shall be drawn from time to time as may be required, and such persons shall be assigned to jury panels within those courts as the courts may decide. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 515.)

§ 11–1905. Length of service

Petit jurors summoned for service in the District of Columbia shall serve for such period of time and at such sessions as the particular court shall direct, but, unless actually engaged as a trial juror in a particular case, may not be required to serve in the court for more than thirty days in any two-year period. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 515.)

§ 11–1906. Fees of jurors

Jurors serving in the Superior Court shall receive the same fees as jurors serving in the United States District Court for the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 516.)

Chapter 21.—REGISTER OF WILLS

Sec.
11–2101. Continuation of office.
11–2102. Appointment; oath; bond; qualifications; compensation.
11–2103. Services as clerk.
11–2104. Powers and duties; restrictions; penalties.
11–2105. Deputies and other employees.
11–2106. Accounts.

§ 11–2101. Continuation of office

The Office of the Register of Wills shall continue as an office in the Probate Division of the Superior Court. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 516.)

EFFECTIVE DATES AND TEMPORARY CONTINUATION OF SECTIONS 11–504 THROUGH 11–506, AS SET OUT IN 1967 EDITION OF CODE

Section 199.(b)(2) of Pub. L. 91–358, provided: (2) The provisions of chapter 21 (relating to the Register of Wills) of title 11 of the District of Columbia Code, as contained in the revision made by part A of this title, shall take effect immediately following the expiration of the thirty-month period beginning on the effective date of this title. The provisions of sections 11–504 through 11–506 of title 11 of the District of Columbia Code (relating to the Register of Wills), in effect on the day before the effective date of this title, shall remain in effect until the expiration of such thirty-month period. During such thirty-month period, the United States District Court for the District of Columbia shall fix the compensation of the Register of Wills without regard to chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code, but at a rate not exceeding the maximum rate authorized for GS–16 of the General Schedule.

§ 11–2102. Appointment; oath; bond; qualifications; compensation

(a) The Superior Court shall appoint and remove the Register of Wills. The Register of Wills shall—

(1) take an oath for the faithful and impartial discharge of the duties of his office; and

(2) give bond, with two or more sureties, to be approved by the chief judge of the Superior Court, in the amount designated by the court, faithfully to discharge the duties of his office, and seasonably to record (A) the decrees and orders of the court in any matters over which the court exercises probate jurisdiction or powers, (B) all wills proved before him or the court, and (C) all other matters directed to be recorded in the court or in his office.

The bond shall be entered in full upon the minutes of the Superior Court and the original filed with the records of the Superior Court.

(b) A person may not be appointed the Register of Wills for the District of Columbia unless he—

(1) is a citizen of the United States;

(2) has been a member of the bar of the District of Columbia for a period of at least five of the ten years immediately before his appointment; and

(3) has been actively engaged in the practice of probate law in the District of Columbia or otherwise has broad experience in, or knowledge on the subject of, the administration of the estates of deceased persons in the District of Columbia.

(c) The compensation of the Register of Wills shall be fixed by the Superior Court without regard to chapter 51 and subchapter III of chapter 53 of title 5 of the United States Code but at a rate not to exceed the maximum rate prescribed for GS–16 of the General Schedule. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 516.)

§ 11–2103. Services as clerk

With respect to the Probate Division of the Superior Court, the Register of Wills shall perform such duties as clerk as the chief judge of the Superior Court may assign. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 516.)

§ 11–2104. Powers and duties; restrictions; penalties

(a) The Register of Wills may—

(1) receive inventories and accounts of sales, examine vouchers, and state accounts of executors, administrators, collectors, and guardians, subject to final approval of the court;

(2) take the probate of claims against the estates of deceased persons that are properly brought before him, and approve or reject claims not exceeding $300; and

(3) take the probate of wills and accept the bonds of executors, administrators, collectors, and guardians, subject to approval of the court.

(b) In matters over which the Superior Court has probate jurisdiction or powers, the Register of Wills shall—

(1) make full and fair entries, in separate records, of the proceedings of the court;

(2) make fair record in strong bound books of all wills proved before him or the court, keeping separate books for wills within the jurisdiction of the court;

(3) make fair and separate record of other matters required by law to be recorded in the court;

(4) lodge in places of safety, designated by the court, original papers filed with him;

(5) make out and issue every summons, process, and order of the court;

(6) make fair and uniform tables of his fees, and post them in a conspicuous place in his office for the inspection of persons having business therein;

(7) prepare and submit to the Executive Officer of the District of Columbia courts such reports as may be required; and

(8) in every respect, act under the control and direction of the court.

(c) The Register of Wills may not—

(1) practice law in any court of the District of Columbia or of the United States; or

(2) demand or receive any fee, gratuity, gift, or reward for giving his advice in any matter relating to his office.

(d) The Register of Wills shall forfeit to the court the sum of $50 for each day that the tables referred to in subsection (b)(6) are missing through his neglect, which may be recovered as other debts for the same amount are recoverable.

(e) If the Register of Wills or a person acting for him takes a greater fee than the fee provided for by law, he shall pay the party injured $100, which may be recovered as other debts for the same amount are recoverable. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 516.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–2105. Deputies and other employees

The Executvie Officer of the District of Columbia courts shall appoint and remove such personnel as may be needed by the Register of Wills, pursuant to chapter 17 of this title. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 517.)

§ 11–2106. Accounts

All fees, costs, and other moneys, except uncollected fees not required by law to be prepaid, collected by the Register of Wills with respect to matters within the jurisdiction of the Superior Court shall be turned over to the Fiscal Officer of the District of Columbia courts. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 517.)

Chapter 23.—MEDICAL EXAMINER

Sec.
11–2301. Medical Examiner; Deputies; appointment, qualifications, and compensation.
11–2302. Supporting services and facilities.
11–2303. Former duties of coroner; oaths; teaching.
11–2304. Deaths to be investigated; notification and investigation of deaths.
11–2305. Possession of evidence and property.
11–2306. Further investigation; autopsy.
11–2307. Autopsy by pathologist other than medical examiner.
11–2308. Delivery of body; expenses.
11–2309. Records; reports; fees for other services.
11–2310. Records as evidence.
11–2311. Autopsies performed under court order.
11–2312. Tissue transplants.

§ 11–2301. Medical Examiner; Deputies; appointment, qualifications, and compensation

(a) The Commissioner of the District of Columbia shall designate or appoint a Chief Medical Examiner and such Deputy Medical Examiners for the District of Columbia as may be necessary.

(b) The Chief Medical Examiner and his deputies shall be physicians licensed in the District of Columbia. The Chief Medical Examiner and at least one deputy shall be certified in anatomic pathology by

the American Board of Pathology or be board eligible. They may be designated from among physicians practicing in the District of Columbia Department of Public Health.

(c) The Commissioner shall fix the compensation of the Chief Medical Examiner and his deputies at a rate or rates not in excess of the per diem equivalent of the rate for GS–18 of the General Schedule contained in section 5332 of title 5 of the United States Code. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 518.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–2302. Supporting services and facilities

The Commissioner shall furnish or make available such investigative, technical, and clerical personnel, facilities, and equipment as the medical examiners shall require, or he may arrange or contract for such services, equipment, and facilities with the United States Government or universities and hospitals in the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 518.)

§ 11–2303. Former duties of coroner; oaths; teaching

(a) The Chief Medical Examiner shall be responsible for all the medical functions formerly performed by the coroner in the District of Columbia, consistent with the provisions of this chapter, and the Chief Medical Examiner and his deputies may administer oaths and affirmations and take affidavits in connection with the performance of their duties.

(b) The Chief Medical Examiner and his deputies may be authorized by the Commissioner of the District of Columbia to teach medical and law school classes, to conduct special classes for law enforcement personnel, and to engage in other activities related to their work. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 518.)

§ 11–2304. Deaths to be investigated; notification and investigation of deaths

(a) Under regulations established by the Chief Medical Examiner, the following types of human deaths occurring in the District of Columbia shall be investigated:

(1) Violent deaths, whether apparently homicidal, suicidal, or accidental, including deaths due to thermal, chemical, electrical, or radiational injury, and deaths due to criminal abortion, whether apparently self-induced or not.

(2) Sudden deaths not caused by readily recognizable disease.

(3) Deaths under suspicious circumstances.

(4) Death of persons whose bodies are to be cremated, dissected, buried at sea, or otherwise disposed of so as to be thereafter available for examination.

(5) Deaths related to disease resulting from employment or to accident while employed.

(6) Deaths related to disease which might constitute a threat to public health.

(b) All law enforcement officers, physicians, undertakers, embalmers and other persons shall promptly notify a medical examiner of the occurrence of all deaths coming to their attention which are subject to investigation under subsection (a) of this section and shall assist in making dead bodies and related evidence available to the medical examiner for investigation and autopsy.

(c) Any physician, undertaker, or embalmer who willfully fails to comply with this section shall be guilty of a misdemeanor and upon conviction shall be fined not less than $100 nor more than $1,000.

(d) The Chief Medical Examiner shall by regulation prescribe procedures for taking possession of a body following a death subject to investigation under subsection (a) of this section and for obtaining all essential facts concerning the medical causes of death and the names and addresses of as many witnesses as it is practicable to obtain. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 518.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–2305.

§ 11–2305. Possession of evidence and property

(a) At the scene of any death subject to investigation under section 11–2304, a law enforcement officer or the medical examiner shall take possession of any objects or articles useful in establishing the cause of death and shall hold them as evidence.

(b) In the absence of the next of kin, a police officer or the medical examiner may take possession of all property of value found on or in the custody of the deceased. If possession is taken of the property, the police officer or medical examiner shall make an exact inventory of it, and deliver the property to the property clerk of the Metropolitan Police Department. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 519.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–2306. Further investigation; autopsy

(a) If, in the opinion of the medical examiner, the cause of death is established with reasonable medical certainty, he shall complete a report thereon.

(b) If, in the opinion of the Chief Medical Examiner, or the United States attorney, further investigation as to the cause of death is required or the public interest so requires, a medical examiner shall either perform, or arrange for a qualified pathologist to perform, an autopsy on the body of the deceased. No consent of next of kin shall be required for an autopsy performed pursuant to this section.

(c) The medical examiner shall make a complete record of the findings of the autopsy and his conclusions with respect thereto and shall prepare a report, and, upon request, furnish a copy to the appropriate law enforcement agency. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 519.)

§ 11–2307. Autopsy by pathologist other than medical examiner

(a) If an autopsy is performed by a pathologist other than a medical examiner by request of a medical examiner, the pathologist shall furnish to the medical examiner a complete record of the findings of the autopsy and his conclusions with respect thereto. The medical examiner shall thereupon prepare a report, indicating the name of the pathologist performing the autopsy and his findings and conclusions, and the medical examiner's own comments

with respect thereto, if appropriate, and, upon request, shall furnish a copy thereof to the appropriate law enforcement agency.

(b) A pathologist other than a medical examiner who performs an autopsy at the request of a medical examiner shall be compensated in accordance with a fee rate established by the Commissioner of the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 519.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–2308. Delivery of body; expenses

(a) Following investigation or autopsy, the medical examiner shall release the body of the deceased to the person having the right to the body for purposes of burial pursuant to law. If there is no such person, he shall dispose of it according to law.

(b) Expenses of transportation of a body by a medical examiner and of autopsies performed pursuant to this chapter shall be borne by the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 519.)

§ 11–2309. Records; reports; fees for other services

(a) The Chief Medical Examiner shall be responsible for maintaining full and complete records and files, properly indexed, giving the name, if known, of every person whose death is investigated, the place where the body was found, the date, cause, and manner of death, and all other relevant information and reports of the medical examiner concerning the death, and shall issue a death certificate.

(b) The records and files maintained under the provisions of subsection (a) of this section shall be open to inspection by the Commissioner of the District of Columbia or his authorized representative, the United States attorney and his assistants, the Metropolitan Police Department, or any other law enforcement agency or official; and the medical examiner shall promptly deliver to such persons copies of all records relating to every death as to which further investigation may be advisable.

(c) Any other person with a legitimate interest may obtain copies of records maintained under the provisions of subsection (a) upon such conditions and payment of such fees as may be prescribed by the Chief Medical Examiner. If such person fails to meet the prescribed conditions, he may obtain copies of such records pursuant to court order if the court is satisfied that he has a legitimate interest.

(d) The Chief Medical Examiner shall prepare an annual report to the Commissioner of the District of Columbia containing information on the number of autopsies performed, statistics as to cause of death, and such other relevant information as the Commissioner of the District Columbia shall require. The report shall be open to inspection by the public. The report shall not identify by name deceased persons examined.

(e) Medical examiners may charge fees, at rates prescribed by the Chief Medical Examiner, for completing insurance forms or performing similar services for private parties. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 520.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–2310.

§ 11–2310. Records as evidence

The records maintained pursuant to section 11–2309, or reproductions thereof certified by the Chief Medical Examiner, are admissable in evidence in any court in the District of Columbia, except that statements made by witnesses or other persons and conclusions upon non-medical matters are not made admissible by this section. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 520.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 11–2311. Autopsies performed under court order

In the case of sudden, violent, or suspicious death when the body is buried without investigation, the United States attorney, on his own motion or on request of a medical examiner or the Metropolitan Police Department, may petition the appropriate court for an order to conduct an inquiry. The court may order the body exhumed and an autopsy performed. In such cases, records and reports shall be filed as if the autopsy were performed prior to burial except that a copy of the report shall be furnished directly to the court. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 520.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 27–128.

§ 11–2312. Tissue transplants

The Chief Medical Examiner may allow the removal of tissue pursuant to section 9 of the District of Columbia Tissue Bank Act (D.C. Code, sec. 2–258). (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 520.)

Chapter 25.—ATTORNEYS

Sec.
11–2501. Admission to bar; regulations; prior admission.
11–2502. Censure, suspension, or disbarment for cause.
11–2503. Disbarment upon conviction of crime; procedure for censure, suspension or disbarment.
11–2504. Censure, suspension, or disbarment by other courts.

§ 11–2501. Admission to bar; regulations; prior admission

(a) The District of Columbia Court of Appeals shall make such rules as it deems proper respecting the examination, qualification, and admission of persons to membership in its bar, and their censure, suspension, and expulsion.

(b) Members of the bar of the District of Columbia Court of Appeals shall be eligible to practice in the District of Columbia courts.

(c) Members of the bar of the United States District Court for the District of Columbia in good standing on April 1, 1972, shall be automatically enrolled as members of the bar of the District of Columbia Court of Appeals, and shall be subject to its disciplinary jurisdiction. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 521.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISION UNDER PRIOR LAW

[See also § 11–2101 in 1967 Edition]

Power of court

Within very wide limits, standards of fitness for membership in the bar of the District Court of the United

States for the District of Columbia are for the District Court itself to establish and maintain. *Carver* v. *Clephane* (1943, 137 F. 2d 685, 78 U.S. App. D.C. 91).

§ 11–2502. Censure, suspension, or disbarment for cause

The District of Columbia Court of Appeals may censure, suspend from practice, or expel a member of its bar for crime, misdemeanor, fraud, deceit, malpractice, professional misconduct, or conduct prejudicial to the administration of justice. A fraudulent act or misrepresentation by an applicant in connection with this application or admission is sufficient cause for the revocation by the court of his admission. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 521.)

§ 11–2503. Disbarment upon conviction of crime; procedure for censure, suspension, or disbarment

(a) When a member of the bar of the District of Columbia Court of Appeals is convicted of an offense involving moral turpitude, and a certified copy of the conviction is presented to the court, the court shall, pending final determination of an appeal from the conviction, suspend the member of the bar from practice. Upon reversal of the conviction the court may vacate or modify the suspension. If a final judgment of conviction is certified to the court, the name of the member of the bar so convicted shall be struck from the roll of the members of the bar and he shall thereafter cease to be a member. Upon the granting of a pardon to a member so convicted, the court may vacate or modify the order of disbarment.

(b) Except as provided in subsection (a), a member of the bar may not be censured, suspended, or expelled under this chapter until written charges, under oath, against him have been presented to the court, stating distinctly the grounds of complaint. The court may order the charges to be filed in the office of the clerk of the court and shall fix a time for hearing thereon. Thereupon a certified copy of the charges and order shall be served upon the member personally, or if it is established to the satisfaction of the court that personal service cannot be had, a certified copy of the charges and order shall be served upon him by mail, publication, or otherwise as the court directs. After the filing of the written charges, the court may suspend the person charged from practice at its bar pending the hearing thereof. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 521.)

EFFECTIVE DATE AND TEMPORARY CONTINUATION OF LAWS CONTAINED IN TITLE 11, CHAPTER 21 OF 1967 EDITION OF THE CODE

Section 199 of Pub. L. 91–358 provided, in part: (a) The effective date of this title (and the amendments made by this title) shall be the first day of the seventh calendar month which begins after the date of the enactment of this Act.

(b) Notwithstanding subsection (a), the following provisions shall take effect as provided in the following paragraphs:

(1) The provisions of chapter 25 (relating to attorneys) of title 11 of the District of Columbia Code, as contained in the revision made by part A of this title, shall take effect on April 1, 1972. The provisions of chapter 21 (relating to attorneys) of title 11 of the District of Columbia Code, in effect on the day before the effective date of this title, shall remain in effect until April 1, 1972; except that during the period beginning on the effective date of this title and ending April 1, 1972, section 11–2103 of such chapter is amended to read as follows:

"§ 11–2103. Disbarment by District Court upon conviction of crime

"When a member of the bar of the United States District Court for the District of Columbia is convicted of an offense involving moral turpitude, and a certified copy of the conviction is presented to the court, the court shall, pending final determination of an appeal from the conviction, suspend the member of the bar from practice. Upon reversal of the conviction the court may vacate or modify the suspension. If a final judgment of conviction is certified to the court, the name of the member of the bar so convicted shall be struck from the roll of the members of the bar and he shall thereafter cease to be a member. Upon the granting of a pardon to a member so convicted, the court may vacate or modify the order of disbarment."

§ 11–2504. Censure, suspension, or disbarment by other courts

The Federal courts in the District of Columbia and the Superior Court may censure, suspend, or expel an attorney from the practice at their respective bars, for a crime involving moral turpitude, or professional misconduct, or conduct prejudicial to the administration of justice. If an attorney is expelled from practice under this section, the court expelling him shall notify the other Federal courts in the District of Columbia and the District of Columbia Court of Appeals of the action taken. (July 29, 1970, Pub. L. 91–358, § 111, title I, 84 Stat. 521.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TITLE 12.—RIGHT TO REMEDY

Chapter 1.—ABATEMENT AND REVIVOR

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 16–2104.

§ 12–101. Survival of rights of action

NOTES TO DECISIONS

Applicability of Federal rules

Substitution of parties in civil actions in courts of District of Columbia is governed by Federal Rules of Civil Procedure. *L. D. Roscoe* v. *J. A. Roscoe* (1967, 379 F. 2d 94, 126 U.S. App. D.C. 317).

Damages

Under statute providing that on death of person for or against whom right of action accrued prior to death, right of action shall survive, provided that in tort actions, right of action shall be limited to damages for physical injury except for pain and suffering, fact of injury alone is not sufficient basis for recovery, and award of damages must be based on results of injury rather than on mere fact of injury. *C. Bogen, Executrix, etc.* v. *L. G. Green* (D.C. App. 1968, 239 A. 2d 154).

Defendant executrix, who was substituted as defendant in personal injury action following death of tort-feasor, was entitled, having made point in proper and timely fashion, to rulings and instructions defining proper elements of recovery under statute providing that on death of person for or against whom right of action accrued prior to death, right of action shall survive, provided that in tort actions, right of action shall be limited to damages for physical injury except for pain and suffering, and failure to make rulings requested required new trial. *Id.*

Libel and slander

1963 amendment to survival statute did not change rule that action for libel and slander does not survive death of defendant. *H. S. Wender* v. *S. Hamburger, etc.* (1968, 393 F. 2d 365, 129 U.S. App. D.C. 256).

—— Pain and suffering

Statute providing that on death of person for or against whom right of action accrued prior to death, right of action shall survive, provided that in tort actions right of action shall be limited to damages for physical injury except for pain and suffering precludes recovery for pain and suffering where either injured party or wrongdoer has died prior to trial. *C. Bogen, Executrix, etc.* v. *L. G. Green* (D.C. App. 1968, 239 A. 2d 154).

Separate and independent claims

Negligent conduct resulting in death may generate simultaneously two independent bases for action, one under the Survival Act and the other under the Wrongful Death Act, upon each of which damages may be sought. *W. J. Emmett, Administrator etc.* v. *Eastern Dispensary and Casualty Hospital et al.* (1967, 396 F. 2d 931, 130 U.S. App. D.C. 50).

Negligent act causing death can give rise simultaneously to separate and independent claims under Wrongful Death Act and under Survival Act. *P. Wharton and L. Wharton etc.* v. *G. L. Jones et al.* (1968, 285 F. Supp. 634).

Survival of action against relatives for support

Where 84-year-old widow invoked the District of Columbia Public Assistance Act of 1962 against her eldest daughter, and the District of Columbia Court of General Sessions denied recovery, and, pending appeal to District of Columbia Court of Appeals, widow died, and her daughter moved for dismissal for mootness against substituted executor, District of Columbia Survival Act did not require abatement, and it was error to grant motion for dismissal for mootness. *J. M. Stone, Executor etc.* v. *A. W. Brewster* (1968, 399 F. 2d 554, 130 U.S. App. D.C. 183).

Tolling of statute

Pendency of personal injury action under Survival Act does not toll statute of limitations on a death claim. *P. Wharton and L. Wharton etc.* v. *G. L. Jones et al.* (1968, 285 F. Supp. 634).

Pendency of wrongful death action did not toll statute of limitations on claim under Survival Act. *Id.*

Waiver of physicians-patient privilege

Under statute providing that no physician or surgeon shall be permitted without consent of patient or his legal representatives to disclose any confidential information acquired in attending patient professionally, the duly qualified personal representative, when there is one, is deceased patient's "legal representative" for purposes of gathering information with a view to prosecuting a wrongful death claim. *W. J. Emmett, Administrator, etc.* v. *Eastern Dispensary and Casualty Hospital et al.* (1967, 396 F. 2d 931, 130 U.S. App. D.C. 50).

Decedent's son and only child had so vital an identification with any cause of action potentially arising upon his father's negligently caused demise as would enable him to waive the physician-patient privilege as to pertinent medical data where there was no personal representative to act in his behalf so that the assertion of the physician-patient privilege did not defeat son's right to inspect decedent's medical report or establish physician's and hospital's duty to preserve confidentiality of records against all save decedent's legal representative. *Id.*

§ 12–102. Substitution of parties

The substitution of parties in civil actions in the United States District Court for the District of Columbia and the Superior Court of the District of Columbia is governed by the Federal Rules of Civil Procedure. (Dec. 23, 1963, 77 Stat. 509, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, § 141(1), title I, 84 Stat. 551.)

AMENDMENT

1970—Section 141(1) of Act July 29, 1970, Pub. L. 91–358 amended section to read as above set out. For provisions of section prior to this amendment, see 1967 edition of the Code.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 3.—LIMITATION OF ACTIONS

§ 12–301. Limitation of time for bringing actions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12–308.

NOTES TO DECISIONS

Acts constituting adverse possession

Payment of taxes is strong evidence of a claim of title when paid by someone other than record owner, however, a mere showing that the record owner, in the course of paying taxes for a lot he concededly owns, also pays an amount ascribable to a small border strip, does not negative another's adverse possession of that strip. *L. M. Gary et ano.* v. *E. B. Dane III* (1969, 411 F. 2d 711, 133 U.S. App. D.C. 397).

Owner's building or fencing out of land is not sufficient to establish adverse possession, despite mere nonuser by record landowner, but there must also be evidence of open and notorious adverse possession by another, up to the fence or structure. *Id.*

Adverse possession

While casual acts are not enough to establish ownership by adverse possession, there is a presumption, effective to establish title in the absence of evidence to the contrary, that the possession is adverse whenever there is "open and continuous use of another's land". *L. M. Gary et ano.* v. *E. B. Dane III* (1969, 411 F. 2d 711, 133 U.S. App. D.C. 397).

Evidence was sufficient to establish title by adverse possession. *Id.*

Breach of contract

This section governed action in the District of Columbia to recover for breach of home improvement contract to waterproof basement of home located in Maryland. *K. L. Fowler and F. D. Fowler* v. *A & A Company and W. R. O'Roark, etc.* (D.C. App. 1970, 262 A. 2d 344).

Statute of limitations begins to run in District of Columbia from date contract is breached. *Id.*

The three-year period within which to commence action to recover under provision of home improvement contract guaranteeing waterproofing of basement for five years began to run on date contractor breached contract by failing to correct defect on demand, and not on date wetness recurred, *Id.*

Since subcontractor had warranted waterproofing of basement of home for five years, warranty was breached when wetness recurred and three-year period of limitations governing contractor's right to recover against subcontractor began to run on date wetness recurred. *Id.*

Delay in delivery of summons and complaint to Marshal

Failure of plaintiff to deliver summonses and copies of complaint to the United States Marshal until 18 days after period of limitations had run was not excusable because of fact that two of corporate defendants were not residents of the District of Columbia and could not be sued and would not be served until plaintiff first filed traffic act bond required by D.C. Code. *Criterion Insurance Company, etc.* v. *W. H. Lyles, et al.* (D.C. App. 1968, 244 A. 2d 913).

Delay in mailing summons and complaint

Although copies of summons and complaint were served upon Director of Motor Vehicles in action arising out of motor vehicle collision in District of Columbia with nonresident motorist, mailing summons and complaint to nonresident motorist seven months after statute of limitations had run constituted failure to comply with statutory requirement that notice of such service and copy of process be sent "forthwith" by registered mail. *R. J. Heinrich* v. *R. S. Huke* (D.C. App. 1968, 244 A. 2d 915).

Evidence—Sufficiency

The court below was correct in concluding, on issue whether clients were estopped by their informal assurances to attorney from asserting limitations as defense in attorney's action to recover fee, that the evidence was insufficient for jury. *R. M. Brown* v. *E. O. Lamb et ano.* (1969, 414 F. 2d 1210, 134 U.S. App. D.C. 314).

Ignorance or mistake

Our jurisdiction recognizes the doctrine that a claim of adverse possession may be rooted in ignorance or mistake, if there was intent to possess disputed area. *L. M. Gary et ano.* v. *E. B. Dane III* (1969, 411 F. 2d 711, 133 U.S. App. D.C. 397).

Injury to real property

Armory board's contracting officer's knowledge in February of 1962 that cracking in concrete structure of stadium was due to interaction of aluminum conduit and calcium chloride was imputable to board itself, and complaint filed by armory board against conduit manufacturer and architectural firm in March of 1966 alleging that cause of cracks was use of aluminum conduit in conjunction with calcium chloride in concrete mix was barred by three-year period of limitations governing injuries to real property. *The District of Columbia Armory Board et al.* v. *D. G. Volkert, etc., et al.* (1968, 402 F. 2d 215, 131 U.S. App. D.C. 74).

A complaint by armory board against architectural firm which was replete with references to fact that stadium had been substantially damaged by cracking in concrete structure and that board was entitled to be made whole for past and future costs of repairing such damage, purpose of action was to recover for an injury to real property, and three-year period of limitations governing injuries to real property, was applicable. *Id.*

Preoccupation in statute pertaining to limitation of time for bringing actions with property injury claims as a distinct class indicates a policy that lawsuits involving them should be heard and disposed of with reasonable promptitude, both for reasons of efficiency in evidentiary exploration and because of undesirability of lengthening unduly into future unresolved shadows of such claims. *Id.*

In real or personal property damage suits brought to recover damages, three-year period of limitations is applicable, whether contract (sealed or unsealed, written or oral) or tort be made legal vehicle of recovery, and not twelve-year period for suits on an instrument under seal. *Id.*

The rule that three-year period of limitation applies where real or personal property is injured and suits are brought to recover damages, whether contract (sealed or unsealed, written or oral) or tort be made legal vehicle of recovery does not render 12-year period of limitation on sealed instruments a nullity, inasmuch as 12-year period operates where suits on such instruments do not have as their purpose recovery of damages for injury to real or personal property. *Id.*

Malpractice

When a foreign object is left in a patient's wound at the close of surgical operation, statute of limitations governing action against physician begins to run when patient becomes aware, or should have become aware of what had happened, and not at moment when surgeon closes wound with foreign object abandoned inside. *M. Burke and A. O. Burke* v. *Washington Hospital Center* (1968, 293 F. Supp. 1328).

The court did not see any good reason for drawing a distinction between malpractice suits and other negligence cases and concluded that impounding of the boats might have been found to be an injury that resulted from appellees' erroneous advice and the three year statute of limitations applied. *Fort Myers Seafood Packers, Inc.* v. *Steptoe and Johnson et al.* (1967, 381 F. 2d 261, 127 U.S. App. D.C. 93).

Prescriptive easement

Where claimant of easement by prescription in alley had not owned property for 15-year period, was not in privity with users of alley and did not show use by titular predecessors, claimant did not possess prescriptive easement in alley. *S. S. Zlotnick et al.* v. *J. I. Benders & Sons, Inc.* (1968, 285 F. Supp. 548).

Tacking of use in order to acquire easement by prescription is impossible without showing of privity between users. *Id.*

Occasional use of alley by some of employees of Claimant's tenants for personal rather than business purposes could not be imputed to claimant of easement by prescription in alley for purpose of establishing use for prescriptive period. *Id.*

Evidence in declaratory judgment action did not establish that alley was continually used by general public for prescriptive period of 15 years. *Id.*

An easement for an air shaft based on open and notorious hostile adverse possession and use for 15 years can be obtained. *Id.*

Tolling of statute

The effect of estoppel is not to stop running of three-year statute of limitations in action for damages for alleged breach of contract or to create a new date for commencement of running of statute, since there remained well over two years in which to commence action when estoppel ceased. *Property 10–F, Inc.* v. *Pack & Process, Inc.* (D.C. App. 1970, 265 A. 2d 290).

Fraudulent concealment of information moving party needs in order to determine whether there is a litigable dispute tolls the running of statute of limitations on death action. *W. J. Emmett, Administrator, etc.* v. *Eastern Dispensary and Casualty Hospital, et al.* (1967, 396 F. 2d 931, 130 U.S. App. D.C. 50).

Statute of limitations on filing wrongful death and survival action was tolled by unprivileged failure of physician and hospital to permit decendent's son to inspect decedent's medical records. *Id.*

Pendency of personal injury action under Survival Act does not toll statute of limitations on a death claim. *P. Wharton and L. Wharton etc.* v. *G. L. Jones et al.* (1968, 285 F. Supp. 634).

Pendency of wrongful death action did not toll statute of limitations on claim under Survival Act. *Id.*

§§ 12–302, 12–305

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 12–308.

§ 12–307. Foreign judgments

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12–308.

NOTES TO DECISIONS

Suit in another jurisdiction

Three-year District of Columbia statute of limitations was not tolled by filing of suit against clients by attorney, in Ohio to recover fee. *R. M. Brown* v. *E. O. Lamp et ano.* (1969, 414 F. 2d 1210, 134 U.S. App. D.C. 314).

§ 12–309. Actions against District of Columbia for unliquidated damages; time for notice

An action may not be maintained against the District of Columbia for unliquidated damages to person of property unless, within six months after the injury or damage was sustained, the claimant, his agent, or attorney has given notice in writing to the Commissioner of the District of Columbia of the approximate time, place, cause, and circumstances of the injury or damage. A report in writing by the Metropolitan Police Department, in regular course of duty, is a sufficient notice under this section. (Dec. 23, 1963, 77 Stat. 511, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 141(2), 84 Stat. 551.)

AMENDMENT

1970—Section 141(2) of Act July 29, 1970, Pub. L. 91–358 amended section by striking out "Board of Commissioners" and inserting in lieu thereof "Commissioner".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Construction

The statute which requires a notice of claim as a prerequisite to maintenance of action against District of Columbia is in derogation of common law and must be strictly construed. *A. Boone* v. *District of Columbia* (1968, 294 F. Supp. 1156).

Purpose of statute

The purpose of a statute which requires a notice of claim as a prerequisite to maintenance of action against District of Columbia is to give District's officials reasonable notice of accident so that facts may be ascertained and, if possible, claim adjusted. *A. Boone* v. *District of Columbia* (1968, 294 F. Supp. 1156).

Sufficiency of notice

Notice of claim is fatally defective if one or more of the statutory elements is lacking. *A. Boone* v. *District of Columbia* (1968, 294 F. Supp. 1156).

Notice of claim was fatally defective where notice failed to apprise District of identity of claimant and notice did not advise District of circumstances of injury, namely loss of consortium. *Id.*

Written notice

Requirement of District of Columbia statute of written notice of claim for injury, providing that police report is sufficient, was satisfied where detective immediately and thoroughly investigated accident and promptly made detailed official report. *S. A. Thomas as the administrator etc., and J. F. Wynn, Jr.* v. *Potomac Electric Power Company and Dist. of Col.* (1967, 266 F. Supp. 687).

TITLE 13.—PROCEDURE GENERALLY

Chap. Sec.

4. Civil Jurisdiction and Service Outside the District of Columbia..... 13–401

AMENDMENTS

1970—Section 142(1)(B), Pub. L. 91–358, amended the analysis by striking out the item relating to chapter 1.

Section 132(b), Pub. L. 91–358 amended the analysis by adding chap. 4, thereto.

Section 142(5)(B), Pub. L. 91–358, amended the analysis by striking out the item relating to chapter 7.

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

Chapter 1.—RULES OF PROCEDURE

§ 13–101. Repealed. July 29, 1970, Pub. L. 91–358, § 142(1)(A), title I, 84 Stat. 552

Section, Act of Dec. 23, 1963, Pub. L. 88–241, dealt with the rule making authority of the various District of Columbia Courts. See new sections 11–743, 11–946 and 11–1203.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

NOTES TO DECISIONS

In Forma Pauperis

In a suit for possession in Landlord and Tenant Branch of District of Columbia Court of General Sessions, where-in trial court, upon motion, granted tenant permission to appeal to District of Columbia Court of Appeals in forma pauperis, the latter court should have allowed appeal without payment of filing fee since tenant submitted an affidavit alleging that he was unable to pay costs imposed and there was no affirmative showing of disentitlement. *J. McKelton* v. *J. E. Bruno* (1970, 428 F. 2d 718, — U.S. App. D.C. —).

Appealing party in landlord and tenant dispute qualified as an indigent for purpose of in forma pauperis requirements in relation to his appeal since while he received approximately $90 take-home pay per week, he also alleged pressing debts and in addition had several dependents to support. *Id.*

Transcript

Since, by motion for transcript, public funds may be expended for that purpose, a copy of motion for transcript should be served on United States attorney. *J. McKelton* v. *J. E. Bruno* (D.C. Tpp. 1970, 264A. 2d 493).

Chapter 3.—PROCESS AND PARTIES

SUBCHAPTER I.—GENERAL PROVISIONS

§ 13–301. Courts to which applicable

Except as otherwise specifically provided by law or rules of court, this chapter applies to the District of Columbia courts. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, § 142(2), title I, 84 Stat. 512.)

AMENDMENT

1970—Section 142(2) of Act July 29, 1970, Pub. L. 91–358, amended section to read as above set out. For provisions of section prior to this amendment, see 1967 edition of the Code.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 11–765) is referred to in section 30–306.

§ 13–302. Service by marshal

Subject to the provisions of law or rules of court for service by other persons, the United States marshal for the District of Columbia or his deputy shall serve the process of the District of Columbia Court of Appeals, and the Superior Court of the District of Columbia. (Dec. 23, 1963, 77 Stat. 513, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 142(3), 84 Stat. 552.)

AMENDMENT

1970—Section 142(3) of Act July 29, 1970, Pub. L. 91–358 amended section by striking out ", and the District of Columbia Court of General Sessions, including the Domestic Relations Branch thereof" and inserting in lieu thereof "and the Superior Court of the District of Columbia"; for provisions of section prior to this amendment, see 1967 edition of the code.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 11–748, 11–765) is referred to in sections 30–306, 45–909, 45–910, 45–914.

SUBCHAPTER II.—SERVICE OF PROCESS; LEGAL REPRESENTATIVES

§ 13–331. Service under other laws and rules of court

This chapter does not limit or affect the right to serve process in any other manner now or hereafter required or permitted by:

(1) other law, including chapter 4 of this title or, any other provisions of this Code; or

(2) rule of court.

(Dec. 23, 1963, 77 Stat. 513, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 142(4), 84 Stat. 552.)

AMENDMENT

1970—Section 142(4) of Act July 29, 1970, Pub. L. 91–358, amended clause (1) by inserting "chapter 4 of this title or," after "including". For provisions of section prior to this amendment see 1967 edition of the code.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 13–332. Service on infants; appointment and compensation of guardian and attorney

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 13–340.

§ 13–334. Service on foreign corporations

NOTES TO DECISIONS

Doing business

Under rules of Court of General Sessions, the defendant's submission of an affidavit, in support of motion to

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dismiss for lack of jurisdiction, setting forth facts tending to show that defendant did not do business in the District of Columbia, converted motion into one for summary judgment. *M. T. Harmatz* v. *Zenith Radio Corporation* (D.C. App. 1970, 265 A. 2d 291).

In the case, the court held that summary judgment of dismissal for want of jurisdiction was proper since defendant submitted affidavit setting forth facts tending to show that it did not do business in the District of Columbia, and plaintiff did not present any evidence on question of whether defendant did business but relied solely on conclusory allegation in complaint. *Id.*

§ 13–336. Service by publication on nonresidents, absent defendants, and unknown heirs or devisees

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–1028, 13–335, 13–337.

§ 13–337. Personal service outside District in lieu of publication

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 2–1028.

§ 13–340. Manner of publication; mailing of copy; default; appointment and compensation of guardian and attorney

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–1028, 16–3706, 16–3735.

§ 13–341. Service by publication on persons unknown to be living or dead and on unknown heirs and devisees

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–3301.

Chapter 4.—CIVIL JURISDICTION AND SERVICE OUTSIDE THE DISTRICT OF COLUMBIA

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.
13–401. Relation to other provisions of law.
13–402. Uniformity of interpretation.

SUBCHAPTER II.—BASES OF PERSONAL JURISDICTION OVER PERSONS OUTSIDE THE DISTRICT OF COLUMBIA

13–421. Definition of person.
13–422. Personal jurisdiction based upon enduring relationship.
13–423. Personal jurisdiction based upon conduct.
13–424. Service outside the District of Columbia.
13–425. Inconvenient forum.

SUBCHAPTER III.—SERVICE OUTSIDE THE DISTRICT OF COLUMBIA

13–431. Manner and proof of service.
13–432. Individuals eligible to make service.
13–433. Individuals to be served; special cases.
13–434. Assistance to tribunals and litigants outside the District of Columbia.

AMENDMENT

1970—This chapter was added by section 132(a) of Pub. L. 91–358.

EFFECTIVE DATE OF 1970 AMENDMENT

Section 199(a) of Pub. L. 91–358, 84 Stat. 597, provided: The effective date of this title (and the amendments made by this title [section 132(a) amended title 13 by adding chapter 4]) shall be the first day of the seventh calendar month which begins after date of the enactment of this Act."

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 13–331.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 13–401. Relation to other provisions of law

Except in cases of irreconcilable conflict, this chapter shall be construed to augment, and not to repeal, any other law of the District of Columbia authorizing another basis of jurisdiction or permitting another procedure for service in civil proceedings in the District of Columbia courts. (July 29, 1970, Pub. L. 91–358, § 132(a), title I, 84 Stat. 548.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 13–402. Uniformity of interpretation

When the statutory language so permits, this chapter shall be so interpreted and construed as to make it uniform with the laws of those jurisdictions which enact in comparable form the first two articles of the Uniform Interstate and International Procedure Act. (July 29, 1970, Pub. L. 91–358, § 132(a), title I, 84 Stat. 548.)

SUBCHAPTER II.—BASES OF PERSONAL JURISDICTION OVER PERSONS OUTSIDE THE DISTRICT OF COLUMBIA

§ 13–421. Definition of person

As used in this subchapter, the term "person" includes an individual, his executor, administrator, or other personal representative, or a corporation, partnership, association, or any other legal or commercial entity, whether or not a citizen or domiciliary of the District of Columbia and whether or not organized under the laws of the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 132(a), title I, 84 Stat. 549.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 13–422. Personal jurisdiction based upon enduring relationship

A District of Columbia court may exercise personal jurisdiction over a person domiciled in, organized under the laws of, or maintaining his or its principal place of business in, the District of Columbia as to any claim for relief. (July 29, 1970, Pub. L. 91–358, § 132(a), title I, 84 Stat. 549.)

§ 13–423. Personal jurisdiction based upon conduct

(a) A District of Columbia court may exercise personal jurisdiction over a person, who acts directly or by an agent, as to a claim for relief arising from the person's—

(1) transacting any business in the District of Columbia;

(2) contracting to supply services in the District of Columbia;

(3) causing tortious injury in the District of Columbia by an act or omission in the District of Columbia;

(4) causing tortious injury in the District of Columbia by an act or omission outside the District of Columbia if he regularly does or solicits business, engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed, or services rendered, in the District of Columbia;

(5) having an interest in, using, or possessing real property in the District of Columbia; or

(6) contracting to insure or act as surety for or on any person, property, or risk, contract, obligation, or agreement located, executed, or to be performed within the District of Columbia at the time of contracting, unless the parties otherwise provide in writing.

(b) When jurisdiction over a person is based solely upon this section, only a claim for relief arising from acts enumerated in this section may be asserted against him. (July 29, 1970, Pub. L. 91–358, § 132(a), title I, 84 Stat. 549.)

§ 13–424. Service outside the District of Columbia

When the exercise of personal jurisdiction is authorized by this subchapter, service may be made outside the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 132(a), title I, 84 Stat. 549.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 13–425. Inconvenient forum

When any District of Columbia court finds that in the interest of substantial justice the action should be heard in another forum, the court may stay or dismiss such civil action in whole or in part on any conditions that may be just. (July 29, 1970, Pub. L. 91–358, § 132(a), title I, 84 Stat. 549.)

SUBCHAPTER III.—SERVICE OUTSIDE THE DISTRICT OF COLUMBIA

§ 13–431. Manner and proof of service

(a) When the law of the District of Columbia authorizes service outside the District of Columbia, the service, when reasonably calculated to give actual notice, may be made—

(1) by personal delivery in the manner prescribed for service within the District of Columbia;

(2) in the manner prescribed by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction;

(3) by any form of mail addressed to the person to be served and requiring a signed receipt; or

(4) as directed by the foreign authority in response to a letter rogatory.

(b) Proof of service outside the District of Columbia may be made by affidavit of the individual who made the service or in the manner prescribed by the law of the District of Columbia, the order pursuant to which the service is made, or the law of the place in which the service is made for proof of service in an action in any of its courts of general jurisdiction. When service is made by mail, proof of service shall include a receipt signed by the addressee or other evidence of personal delivery to the addressee satisfactory to the court. (July 29, 1970, Pub. L. 91–358, § 132(a), title I, 84 Stat. 549.)

§ 13–432. Individuals eligible to make service

Service outside the District of Columbia may be made by an individual who is permitted to make service of process under the law of the District of Columbia or under the law of the place in which the service is made or who is designated by a District of Columbia court. (July 29, 1970, Pub. L. 91–358, § 132(a), title I, 84 Stat. 550.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 13–433. Individuals to be served; special cases

When the law of the District of Columbia requires that in order to effect service one or more designated individuals be served, service outside the District of Columbia under this article must be made upon such designated individual or individuals. (July 29, 1970, Pub. L. 91–358, § 132(a), title I, 84 Stat. 550.)

§ 13–434. Assistance to tribunals and litigants outside the District of Columbia

(a) A District of Columbia court may order service upon any person who is domiciled or can be found within the District of Columbia of any document issued in connection with a proceeding in a tribunal outside the District of Columbia. The order may be made upon application of any interested person or in response to a letter rogatory issued by a tribunal outside the District of Columbia and shall direct the manner of service.

(b) Service in connection with a proceeding in a tribunal outside the District of Columbia may be made within the District of Columbia without an order of court.

(c) Service under this section does not, of itself, require the recognition or enforcement of an order, judgment, or decree rendered outside the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 132(a), title I, 84 Stat. 550.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 7.—TRIAL

§ 13–701. Repealed. Mar. 27, 1968, Pub. L. 90–274, § 103(a), 82 Stat. 62

Section, Act Dec. 23, 1963, Pub. L. 88–241, § 1, 77 Stat. 517, dealt with special juries in the United States District Court for the District of Columbia. For other provisions dealing with juries, see ch. 121 of title 28, U.S. Code.

EFFECTIVE DATE OF REPEAL AND APPLICABILITY IN CERTAIN CASES

Section 104, act Mar. 27, 1968, Pub. L. 90–274, provided that: "This Act [Repealing, §§ 7–213a, 13–701, 11–2301 through 11–2305 (except the last par. of 11–2302) 11–2307 through 11–2312, amending §§ 7–318, 11–2306, 16–1312, 16–1357 and 22–1414] shall become effective two hundred and seventy days after the date of enactment: *Provided,* That this Act shall not apply in any case in which an indictment has been returned or petit jury empaneled prior to such effective date."

§ 13–702. Repealed. July 29, 1970, Pub. L. 91–358, § 142(5)(A), title I, 84 Stat. 552

Section, Act of Dec. 23, 1963, Pub. L. 88–241, dealt with jury trials in civil cases in the Court of General Session. See new chapter 19 of title 11.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

TITLE 14.—PROOF

Chapter 1.—EVIDENCE GENERALLY; DEPOSITIONS

Sec.
14–104. Testimony of nonresident witnesses for use in Superior Court.

AMENDMENT

1970—Section 143(2)(B) of Pub. L. 91–358, amended the item relating to section 14–104 to read as above set out.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 14–102. Impeachment of own witness; surprise

NOTES TO DECISIONS

Admissibility of deposition

Deposition of party may be admitted for any purpose including introduction as independent or original evidence. *Firemen's Insurance Company of D.C. etc., et ano.* v. *Henry Fuel Company, Inc., et ano.* (D.C. App. 1968, 245 A. 2d 127).

When witness denies giving answer in deposition or does not remember doing so and his recollection is not refreshed on a reading of questions and his answers, deposition should be offered and received as evidence that statements were made but only to affect credibility and not as affirmative evidence. *Id.*

Discretion of Court

Permitting prosecutor to read statements of government witnesses in their entirety to jury in course of his use of them for impeachment purposes pursuant to claim of surprise was not abuse of discretion. *J. S. Coleman* v. *United States* (1966, 371 F. 2d 343, 125 U.S. App. D.C. 246).

Failure, sua sponte, to immediately caution jury as to limited purpose for which statements of government witnesses used for impeachment purposes pursuant to claim of surprise were being received was not abuse of discretion. *Id.*

Wide latitude in discretion of judge is to be allowed in examination of a recalcitrant witness. *L. O. Troublefield* v. *United States* (1967, 372 F. 2d 912, 125 U.S. App. D.C. 339).

Foundation for impeachment

When a party is taken by surprise by the evidence of his witness, the latter may be interrogated as to inconsistent statements previously made by him for purpose of refreshing his recollection and inducing him to correct his testimony, and party so surprised may also show the facts to be otherwise than as stated, although this incidentally tends to discredit the witness. *L. O. Troublefield* v. *United States* (1967, 372 F. 2d 912, 125 U.S. App. D.C. 339).

Before actual proof of inconsistent statements may be given by party surprised by testimony of his own witness, witness must be confronted with circumstances of the earlier statement, and he must be asked whether or not he made such statement and be given opportunity to explain. *Id.*

Where prosecution witness admitted presence when shooting occurred but denied that he had seen the shooting and swore that he did not know who had done the shooting, and at bench conference the prosecutor presented to trial judge a statement signed by witness inconsistent with such testimony, and witness admitted his signature to statement but swore that he had never seen the paper before, court properly ruled that foundation for surprise had been laid and prosecutor had right to put questions as to inconsistent statement. *Id.*

Harmless or prejudicial error

Court's failure to admit deposition, after witness at trial stated that he could not recall events of fire or his testimony given at deposition, was not prejudicial error where court did consider the impeaching testimony as of record and even gave it every affirmative consideration in making its decision. *Firemen's Insurance Company of Washington, D.C., etc., et ano.* v. *Henry Fuel Company, Inc., et ano.* (D.C. App. 1968, 245 A. 2d 127).

Impeachment

"Surprise" referred to in the statute permitting government to impeach its own witness is presumably founded upon good faith. *W. M. Brown* v. *United States* (1969, 411 F. 2d 716, 134 U.S. App. D.C. 1).

An affidavit and pleading asserting that government avoided further interrogation of its own witness before trial in order to be able to claim surprise and thereby to impeach the witness required remand for supplementation by findings and conclusions by district court after evidentiary hearing on post-trial motion for new trial on ground of newly discovered evidence. *Id.*

Surprise

Statute permitting impeachment of witnesses pursuant to claim of surprise contemplates ruling by trial court which comprehends, in addition to finding of surprise, immediate representation to jury as to purpose for which impeaching statements are being permitted to come in *J. S. Coleman* v. *United States* (1966, 371 F. 2d 343, 125 U.S. App. D.C. 246).

§ 14–103. Depositions for use in State and Territorial Courts

When a commission is issued or notice given to take the testimony of a witness found within the District of Columbia, to be used in an action pending in a court of a State, territory, commonwealth, possession, or place under the jurisdiction of the United States, the testimony may be taken by leave of a judge of the United States District Court in like manner and with like effect as other depositions are taken in United States district courts, or by leave of a judge of the Superior Court of the District of Columbia in the manner prescribed by the rules of that court. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 143(1), 84 Stat. 552.)

AMENDMENT

1970—Section 143(1) of Act July 29, 1970, Pub. L. 91–358; amended section by striking out the period at the end thereof and inserting in lieu thereof ", or by leave of a judge of the Superior Court of the District of Columbia in the manner prescribed by the rules of that court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CROSS REFERENCES

Depositions—
Criminal cases, see § 23–108.
Probate court, see § 16–3111.

§ 14–104. Testimony of nonresident witnesses for use in Superior Court

If the testimony of nonresident witnesses is required by either party to a civil action or proceeding in the Superior Court of the District of Columbia, upon motion designating the names of the witnesses, may appoint an examiner to take their

testimony, to whom it shall issue a commission. The testimony shall be taken as provided in the rules of the Superior Court. (Dec. 23, 1963, 77 Stat. 518, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 143(2)(A), 84 Stat. 552.)

AMENDMENTS

1970—Section 143(2)(A) of Pub. L. 91–358 amended heading by substituting "Superior Court" for "Court of General Sessions"; and amended section (1) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia" and (2) by striking out all after the first sentence and inserting in lieu thereof "The testimony shall be taken as provided in the rules of the Superior Court."

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 11–741) is referred to in sections 45–909, 45–910, 45–914.

Chapter 3.—COMPETENCY OF WITNESSES

Sec.
14–305. Competency of witnesses; impeachment by evidence of conviction of crime.

AMENDMENT

1970—Item 14–305 of section analysis was amended by sec. 133(b) of Pub. L. 91–358 to read as above set out.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceeding section 11–101.

§ 14–301. Parties and other interested persons generally

NOTES TO DECISIONS

Expert testimony

In this case, the court held that disinterestedness is not required of expert witnesses any more than it is required of ordinary witnesses. *Liberty Mutual Insurance Co.* v. *B. F. Joy Co., Inc., et al.* (1970, 424 F. 2d 831, 137 U.S. App. D.C. 343)

"The interest of a witness is merely one matter that goes to weight of his testimony and does not go to his competence. *Id.*

§ 14–302. Testimony against deceased or incapable person

NOTES TO DECISIONS

Admissions of decedent

Statute which prohibits a judgment against the personal representative of deceased on uncorroborated testimony of plaintiff was applicable only to plaintiff, not defendant, and permitting landlady to testify, in suit by decedent's administratrix to recover balance of bank account held in joint names of decedent and decedent's landlady and to recover automobile registered in both decedent's and landlady's names, as to declarations and admissions of decedent did not violate such statute. *E. L. Prather* v. *J. B. Hill* (D.C. App. 1969, 250 A. 2d 690).

Corroboration

Where witnesses, who were not disqualified by statute, testified that in their presence decedent spoke of car as landlady's car and of joint bank account in a manner indicating he considered it as landlady's, there was sufficient corroboration to permit landlady to testify, in suit by decedent's administratrix to recover balance of bank account held in joint names of decedent and decedent's landlady and to recover automobile registered in both decedent's and landlady's names, as to declarations and admissions of decedent, even if statute prohibiting judgment against decedent's personal representative on uncorroborated testimony of plaintiff was applicable. *E. L. Prather* v. *J. B. Hill* (D.C. App. 1969, 250 A. 2d 690).

Dead man's statute permits judgment against estate of deceased person based essentially on the survivor's testimony if there is other evidence from which reasonable men might conclude that his testimony is probably true. *J. W. Toliver and L. M. Kennedy* v. *G. A. Durham, Executrix etc.* (D.C. App. 1968, 240 A. 2d 359).

Under statute prohibiting judgment against representative of decedent on unsupported testimony of adversary, each case depends upon its own facts and test is whether evidence, taken as whole, tends to make story substantially more credible. *Id.*

Record disclosing that trial court in dismissing claims for personal service rendered decedent may have found corroborating testimony was not sufficient to produce belief that claimants' testimony was probably true would not support contention that trial court too narrowly interpreted dead man's statute in dismissing claims. *Id.*

§ 14–303. Testimony of deceased or incapable person

NOTES TO DECISIONS

Conversation with deceased vendor

Conversation that deceased vendor had with one of her daughters during her life in which she told her that that government had informed the vendor that she was not legally entitled to any compensation for gravel pit on land sold by the vendor to Army Corps of Engineers would be admissible only if given as testimony before her death; which was not the case here. *I. E. Mills and F. E. Mahoney* v. *United States* (1969, 410 F. 2d 1255, U.S. Court of Claims).

§ 14–305. Competency of witnesses; impeachment by evidence of conviction of crime

(a) No person is incompetent to testify, in either civil or criminal proceedings, by reason of his having been convicted of a criminal offense.

(b)(1) Except as provided in paragraph (2), for the purpose of attacking the credibility of a witness, evidence that the witness has been convicted of a criminal offense shall be admitted if offered, either upon the cross-examination of the witness or by evidence aliunde, but only if the criminal offense (A) was punishable by death or imprisonment in excess of one year under the law under which he was convicted, or (B) involved dishonesty or false statement (regardless of punishment). A party establishing conviction by means of cross-examination shall not be bound by the witness' answers as to matters relating to the conviction.

(2)(A) Evidence of a conviction of a witness is inadmissible under this section if—

(i) the conviction has been the subject of a pardon, annulment, or other equivalent procedure granted or issued on the basis of innocence, or

(ii) the conviction has been the subject of a certificate of rehabilitation or its equivalent and such witness has not been convicted of a subsequent criminal offense.

(B) In addition, no evidence of any conviction of a witness is admissable under this section if a period of more than ten years has elapsed since the later of (i) the date of the release of the witness from confinement imposed for his most recent conviction of any criminal offense, or (ii) the expiration of the period of his parole, probation, or sentence granted or imposed with respect to his most recent conviction of any criminal offense.

(c) For purposes of this section, to prove conviction of crime, it is not necessary to produce the whole record of the proceedings containing the conviction, but the certificate, under seal, of the clerk of the court wherein the proceedings were had, stating the fact of the conviction and for what cause, shall be sufficient.

(d) The pendency of an appeal from a conviction does not render evidence of that conviction inadmissible under this section. Evidence of the pendency of such an appeal is admissible. (Dec. 23, 1963, 77 Stat. 519, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, § 133(a), title I, 84 Stat. 550.)

AMENDMENT

1970—Section 133(a) of Act July 29, 1970, Pub. L. 91–358, amended section to read as above set out. For provisions of section prior to this amendment, see 1967 edition of the Code.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS

Abuse of discretion

The question of which prior conviction to allow for impeachment purposes is a matter for trial judge's discretion, and failure to exercise that discretion by permitting prosecution to select conviction that it is going to use constitutes an abuse thereof. *United States* v. *McIntosh* (1970, 426 F. 2d 1231, —— U.S. App. D.C. ——).

The decision of the trial court, rendered after hearing on admissibility, that 1959 conviction of one defendant for housebreaking and larceny and 1962 conviction of another defendant for attempted housebreaking could be brought out on cross-examination in robbery prosecution unless either defendant could satisfy court that since conviction he had led legally blameless life, was not an abuse of discretion. *United States* v. *J. L. Bailey et ano.* (1970, 426 F. 2d 1236, — U.S. App. D.C. —).

It was not an abuse of discretion to deny impeachment of complaining witness in prosecution for robbery by reference to complaining witness' prior convictions for assault and rape affecting substantial rights of defendants where impeachment of the witness with three convictions for crimes of auto theft, robbery, and burglary, each crime having element of dishonesty, was permitted. *G. A. Davis et al.* v. *United States* (1969, 409 F. 2d 453, 133 U.S. App. D.C. 167).

Admissibility of prior conviction

The fact that a defendant is his only witness that or his prior crimes were serious does not bar introduction of evidence of prior crimes on issue of defendant's credibility as a witness. *United States* v. *W. McIntosh* (1970, 426 F. 2d 1231, — U.S. App. D.C. —).

Admission, for impeachment purposes, of prior conviction, entered on plea of guilty, for misdemeanor of taking property without right did not constitute reversible error in robbery prosecution. *A. A. Williams* v. *United States* (1969, 409 F. 2d 471, 133 U.S. App. D.C. 185).

Statute which permits fact of prior conviction to be given in evidence to affect defendant's credibility as a witness comprehends misdemeanor convictions and did not preclude admission of prior misdemeanor, conviction of taking property without right for impeachment purposes in robbery prosecution. *Id.*

Evidence of prior convictions

It was prejudicial to admit, without limit, evidence of three prior petit larceny convictions on ground that the convictions were relevant to the veracity of defendant accused of attempted petit larceny. *W. G. Smith* v. *United States* (D.C. App. 1969, 256 A. 2d 901).

Allowing government to question defendant accused of petit larceny as to his former larceny convictions did not constitute an abuse of discretion in view of fact that trial judge fully instructed jury that they were to consider such evidence only in connection with their evaluation of credence to be given defendant's testimony and that prior convictions were in no way evidence of defendant's guilt of present charge. *F. Ginyard* v. *United States* (D.C. App. 1967, 232 A. 2d 590).

Exemption from impeachment

In order for a defendant to have right to testify free from impeachment by prior convictions, the defense must show how and why his case calls for discretionary exemption from impeachment, and merely stating it is important for defendant to testify is not sufficient to meet such burden. *M. Evans et ano.* v. *United States* (1968, 397 F. 2d 675, 130 U.S. App. D.C. 114).

Harmless error

Any error resulting from alleged unconstitutionality of statute permitting impeachment of credibility of witnesses by means of prior criminal conviction was, as to defendant who elected not to testify in trial for robbery, harmless beyond any reasonable doubt. *F. Weaver* v. *United States* (1969, 408 F. 2d 1269, 133 U.S. App. D.C. 66).

Impeachment

Evidence of prior felony convictions was proper for impeachment purposes against defendant who took the stand in his own defense. *K. J. Burg* v. *United States* (1969, 406 F. 2d 235, Ninth Circuit).

Five-year-old robbery conviction was not too remote for impeachment of credibility of defendant on trial for robbery. *F. Weaver* v. *United States* (1969, 408 F. 2d 1269, 133 U.S. App. D.C. 66).

Where there was no claim either at the trial or on appeal that the provisions of the Youth Corrections Act manifest a congressional purpose that convictions under that Act not be used for impeachment purposes, then the trial judge did not abuse his discretion by allowing impeachment by a prior robbery conviction in which the sentence had been made under the Youth Corrections Act. *Id.*

Refusal of the court to exercise its discretion and permit defendant on trial for robbery to testify free of impeachment by prior conviction, and trial court's decision to permit use of five-year-old robbery conviction for impeachment if defendant should choose to testify, were not abuse of discretion. *Id.*

It was proper to receive in evidence defendant's prior petit larceny conviction in subsequent prosecution for unauthorized use of motor vehicle, possession of sawed-off shotgun, and carrying a dangerous weapon, where defendant's testimony that he had not stolen the automobile directly conflicted with credible testimony offered by prosecution, and petit larcency involved elements of "deceit, fraud, cheating, or stealing" which reflect "adversely on a man's honesty and integrity". *R. Smith, Jr., etc.* v. *United States* (1968, 406 F. 2d 667, 132 U.S. App. D.C. 131).

Where defense raises issue of whether evidence of defendant's prior convictions should be excluded from trial for purposes of impeaching defendant's credibility when he testifies, even though burden of persuasion remains on defendant, there is a duty on judge to make sufficient inquiry to inform himself on relevant considerations. *L. B. Jones* v. *United States* (1968, 402 F. 2d 639, 131 U.S. App. D.C. 88).

On showing that defendant's testimony at his trial for robbery was essential because prosecution based whole case on delayed identification by complaining witness and therefore decision depended on credibility, trial judge's permitting evidence of defendant's prior conviction of assault to be introduced to impeach defendant's credibility was an abuse of discretion. *Id.*

Crime of assault is remotely, if at all, probative on issue of veracity of a defendant who testifies at his own trial. *Id.*

Impreachment of an accused by proof of past criminal violations remains a legitimate technique only so far as its probative importance on credibility justifies, in terms of the quest for truth, the inherent risk of prejudice on issue of guilt; the matter remains one of discretion. *A. B. Brooke* v. *United States of America* (1967, 385 F. 2d 279, 128 U.S. App. D.C. 19).

In exercise of trial judge's discretion in determining whether to allow impeachment of defendant by prior conviction when defendant takes stand in his own defense, the standard is whether trial judge believes the prejudicial effect of impeachment far outweighs the probative relevance of the prior conviction to the issue of credibility. *M. W. Gordon* v. *United States* (1967, 383 F. 2d 936, 127 U.S. App. D.C. 343; cert. denied 390 U.S. 1029, 20 L. Ed. 2d 287).

Defendant who takes the stand in his own behalf has burden of persuasion that the trial court should exclude evidence of defendant's prior conviction. *Id.*

To bar impeachment of defendant by prior conviction when defendant takes stand in his own defense, trial

court must find that the prejudice far outweighs the probative relevance to credibility or that, even if relevant, the cause of truth would be helped more by letting the jury hear the defendant's story than by the defendant's foregoing that opportunity because of the fear of prejudice founded upon a prior conviction. *Id.*

When issue of whether defendant's prior convictions should not be admitted for impeachment purposes is raised, trial court should make an inquiry, allowing the defendant an opportunity to show why judicial discretion should be exercised in favor of exclusion of criminal record. *Id.*

Legitimate purpose of impeachment is not to show that the accused who takes the stand is a "bad" person but rather to show background facts which bear directly on whether jurors ought to believe him rather than other and conflicting witnesses. *Id.*

The reason for exposing defendant's prior criminal record is to attack his character and to call into question his reliability for truth telling. *Id.*

Convictions which rest on dishonest conduct relate to credibility of witness while those of violent or assaultive crimes generally do not. *Id.*

Traffic violations, however serious, generally do not relate to credibility. *Id.*

Prior conviction, even one involving fraud or stealing, if it occurred long before and has been followed by legally blameless life, should generally be excluded for impeachment purposes on ground of remoteness. *Id.*

Generally, those convictions which are for the same crime should be admitted sparingly for purpose of impeachment of defendant, with possible solution being that discretion be exercised to limit impeachment by way of a similar crime to a single conviction and then only when circumstances indicate strong reasons for disclosure, and where the conviction directly relates to veracity. *Id.*

In nonjury hearing during criminal trial for purpose of determination of whether defendant's prior convictions should be admitted for impeachment purposes, defendant could not be compelled to give testimony and such testimony as given would not be admissible in evidence except for impeachment. *Id.*

Trial court did not abuse its discretion in robbery and assault with a dangerous weapon prosecution by permitting the government to impeach defendant's testimony by showing prior conviction. *Id.*

Impeachment of witness

Ruling that prior criminal convictions may not be automatically received into evidence for purposes of impeachment and may be excluded by trial judge in exercise of his discretion applies to all witnesses. *G. A. Davis, et al.* v. *United States* (1969, 409 F. 2d 453, 133 U.S. App. D.C. 167).

The doctrine that a statute governing impeachment by conviction means that prior criminal convictions are not to be automatically admitted for purpose of impeachment and may be excluded by trial judge in exercise of his discretion, applies to other witnesses as well as to criminal defendants, though there may be cases where trial judge should make distinctions in his impeachment rulings. *Id.*

Record of impeachment

Consideration of question whether trial court abused its discretion by permitting government to cross-examine defendant as to prior petit larceny conviction had to be on the record. *R. Smith, Jr., etc.* v. *United States* (1968, 406 F. 2d 667, 132 U.S. App. D.C. 131).

Reversible error

If the trial judge determines in a pretrial hearing that one of a number of defendant's prior convictions is to be introduced for impeachment purposes, it is not error per se to allow impeachment by a narcotics conviction under statute allowing fact of prior conviction to be given in evidence to affect defendant's credibility as a witness. *United States* v. *W. McIntosh* (1970, 426 F. 2d 1231, — U.S. App. D.C. —).

The use of a more recent narcotics conviction for impeachment purposes against defendant in prosecution for mail theft, as opposed to more remote larceny after trust conviction that carried inference of propensity to commit crime charged, did not affect any substantial rights of defendant and erroneous allowance of prosecution to select conviction it was going to use for impeachment purposes did not constitute reversible error. *Id.*

Review

Defendant's taking stand does not preclude his raising point on appeal as to whether trial judge abused discretion in permitting introduction of prior conviction to impeach defendant's credibility. *L. B. Jones* v. *United States* (1968, 402 F. 2d 639, 131 U.S. App. D.C. 88).

Conviction for violation of federal narcotics laws was affirmed on appeal in which defendant raised issue whether there was adequate evidence to support verdict of guilty and asserted a failure by trial court to exercise discretion committed to it with respect to admission of a prior conviction to impeach defendant's credibility. *F. Blakney* v. *United States* (1968, 397 F. 2d 648, 130 U.S. App. D.C. 87).

§ 14–306. Husband and wife

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–165, 16–1005.

NOTES TO DECISIONS

Appeal and error

Permitting wife to testify against husband, under this section making wife competent but not compellable, was not error, although trial judge had not advised wife that she need not testify, since defense counsel declined trial judge's invitation to request appropriate instruction to witness and wife responded affirmatively to prosecuting attorney's inquiry as to whether she wished to testify. *United States* v. *F. Lewis* (1970, 433 F. 2d 1146, — U.S. App. D.C. —).

Permitting wife to testify, in rebuttal to alibi, that the defendant had returned to their apartment carrying a sawed-off shotgun was not plain error since defendant made only general objection to wife's testimony and record did not disclose whether husband's acts were in nature of confidential communication. *Id.*

Confidential nature

Acts do not become confidential communications merely because during coverture they are performed by one spouse in presence of the other nor do essential qualities of communication and confidentiality flow automatically from the fact that act seen by other spouse is one that connotes criminal conduct. *United States* v. *F. Lewis* (1970, 433 F. 2d 1146, — U.S. App. D.C. —).

This section disqualifying spouse as witness as to confidential communications does not prohibit testimony as to act where acting spouse attempted to conceal act from testifying spouse. *Id.*

Elements of communication and confidentiality would be lacking, and wife would not be prohibited from testifying to husband's reentry into their apartment, if the reentry was clandestine. *Id.*

Wife would not be prohibited from testifying to husband's reentry into their apartment if husband was unaware of or indifferent to wife's observation. *Id.*

In general

Disqualification of spouse as a witness in litigation to which other is party survives dissolution of the marriage. *United States* v. *F. Lewis* (1970, 433 F. 2d 1146, — U.S. App. D.C. —).

Marital disqualification, rendering spouse incompetent to testify to confidential communications, is designed to insure subjectively unrestrained privacy of communication, free from any fear of compulsory disclosure, and the protection extends only to communications, not to acts that are in no way communications. *Id.*

§ 14–307. Physicians

(a) In the Federal courts in the District of Columbia and District of Columbia courts a physician or surgeon may not be permitted, without the consent of the person afflicted, or of his legal representative, to disclose any information, confidential in its

nature, that he has acquired in attending a patient in a professional capacity and that was necessary to enable him to act in that capacity, whether the information was obtained from the patient or from his family or from the person or persons in charge of him.

(b) This section does not apply to:

(1) evidence in criminal cases where the accused is charged with causing the death of, or inflicting injuries upon, a human being, and the disclosure is required in the interests of public justice;

(2) evidence relating to the mental competency or sanity of an accused in criminal trials where the accused raises the defense of insanity or where the court is required under prevailing law to raise the defense sua sponte, or in the pretrial or post-trial proceedings involving a criminal case where a question arises concerning the mental condition of an accused or convicted person; or

(3) evidence relating to the mental competency or sanity of a child alleged to be delinquent, neglected, or in need of supervision in any proceeding before the Family Division of the Superior Court.

(Dec. 23, 1963, 77 Stat. 519, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 143(3), 84 Stat. 552.)

AMENDMENT

1970—Section 143(3) of Act July 29, 1970, Pub. L. 91–358, amended the section as follows: (A) by striking out "courts of the District of Columbia" in subsection (a) and inserting in lieu thereof "Federal courts in the District of Columbia and District of Columbia courts";

(B) by inserting "or where the court is required under prevailing law to raise the defense sua sponte" immediately after "where the accused raises the defense of insanity" in subsection (b)(2); and

(C) by striking out "or" at the end of paragraph (1) of subsection (b), by striking out the period at the end of paragraph (2) of such subsection and inserting in lieu thereof "; or", and by adding after paragraph (2) a new paragraph (3) to read as above set out.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–165; 2–496.

NOTES TO DECISIONS

Legal representative

Under statute providing that no physician or surgeon shall be permitted without consent of patient or his legal representatives to disclose any confidential information acquired in attending patient professionally, the duly qualified personal representative, when there is one, is deceased patient's "legal representative" for purposes of gathering information with a view to presecuting a wrongful death claim. *W. J. Emmett, Administrator etc.* v. *Eastern Dispensary and Casualty Hospital et al.* (1967, 396 F. 2d 931, 130 U.S. App. D.C. 50).

Decedent's son and only child had so vital an identification with any cause of action potentially arising upon his father's negligently caused demise as would enable him to waive the physician-patient privilege as to pertinent medical data where there was no personal representative to act in his behalf so that the assertion of the physician-patient privilege did not defeat son's right to inspect decedent's medical report or establish physician's and hospital's duty to preserve confidentiality of records against all save decedent's legal representative. *Id.*

Right of decedent's son to inspect medical records

Statue defining physician-patient privilege and, by its terms, operating only in the courts of the District of Columbia was not applicable and did not preclude decedent's son from inspecting decedent's medical records or render physician and hospital free of any duty to make such records available where lawsuit had not taken shape when son asked that records be made accessible. *W. J. Emmett, Administrator etc.* v. *Eastern Dispensary and Casualty Hospital et al.* (1967, 396 F. 2d 931, 130 U.S. App. D.C. 50).

§ 14–309. Clergy

A priest, clergyman, rabbi, or other duly licensed, ordained, or consecrated minister of a religion authorized to perform a marriage ceremony in the District of Columbia or duly accredited practitioner of Christian Science may not be examined in any civil or criminal proceedings in the Federal courts in the District of Columbia and District of Columbia courts with respect to any—

(1) confession, or communication, made to him, in his professional capacity in the course of discipline enjoined by the church or other religious body to which he belongs, without the consent of the person making the confession or communication; or

(2) communication made to him, in his professional capacity in the course of giving religious or spiritual advice, without the consent of the person seeking the advice; or

(3) communication made to him, in his professional capacity, by either spouse, in connection with an effort to reconcile estranged spouses, without the consent of the spouse making the communication.

(Dec. 23, 1963, 77 Stat. 520, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 143(4), 84 Stat. 553.)

AMENDMENT

1970—Section 143(4) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "courts of the District of Columbia" and inserting in lieu thereof "Federal courts in the District of Columbia and District of Columbia courts".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 5.—DOCUMENTARY EVIDENCE

§ 14–503. Record of will as prima facie evidence of contents and execution

A record of a will or codicil recorded in the office of the Register of Wills of the District of Columbia, that has been admitted to probate by a court in the District of Columbia, or a record of the transcript of the record and probate of a will or codicil elsewhere, or of a certified copy thereof filed in the office of the Register of Wills, is prima facie evidence of the contents and due execution of the will or codicil. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, §143(5), 84 Stat. 553.)

AMENDMENT

1970—Section 143(5) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "the United States District Court for the District of Columbia, or by the former orphans' court of the District" and inserting in lieu thereof "a court in the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 14–505. Municipal ordinances and regulations

Municipal ordinances and regulations in force in the District of Columbia may be proved by producing in evidence a copy thereof certified as provided by the Commissioner; and the certified copy is prima facie evidence of the due adoption and promulgation of the ordinances and regulations. (Dec. 23, 1963, 77 Stat. 521, Pub. L. 88–241, § 88–241, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 143(6), 84 Stat. 553.)

AMENDMENT

1970—Section 143(6) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "by the secretary or an assistant secretary of the Board of Commissioners" and substituting in lieu thereof "as provided by the Commissioner".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 7.—ABSENCE FOR SEVEN YEARS

§ 14–701. Presumption of death

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14–702, 20–2315.

§ 14–702. Person presumed dead found living

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–2315.

TITLE 15.—JUDGMENTS AND EXECUTIONS; FEES AND COSTS

Chapter 1.—JUDGMENTS AND DECREES

Sec.
15–101. Enforceable period of judgments; expiration.
15–102. Lien of judgment, decree, or forfeited recognizance.
15–103. Effect of revival.
15–104. Priority of liens.
15–105. Decree confirming sale of property; effect; ordering conveyance.
15–106. Judgment and damages assessed in actions on bonds or penal sums.
15–107. Setting off judgments.
15–108. Interest on judgment for liquidated debt.
15–109. Interest on judgment for damages in contract or tort.
15–110. Interest on judgment on contracts made elsewhere.
15–111. Counsel fee in proceeding on bond or undertaking.

AMENDMENTS

1970—Section 144(4)(C) of Pub. L. 91–358, amended the analysis by striking out "SUBCHAPTER I.—GENERALLY" and by striking out the matter relating to subchapter II.

Section 144(4)(B) of Pub. L. 91–358, struck out the subheading, "SUBCHAPTER I.—GENERALLY".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

§ 15–101. Enforceable period of judgments; expiration

(a) Except as provided by subsection (b) of this section, every final judgment or final decree for the payment of money rendered in the—

(1) United States District Court for the District of Columbia; or

(2) Superior Court of the District of Columbia, when filed and recorded in the office of the Recorder of Deeds of the District of Columbia, is enforceable, by execution issued thereon, for the period of twelve years only from the date when an execution might first be issued thereon, or from the date of the last order of revival thereof. The time during which the judgment creditor is stayed from enforcing the judgment, by written agreement filed in the case, or other order, or by the operation of an appeal, may not be computed as a part of the period within which the judgment is enforceable by execution.

(b) * * *

(As amended Mar. 11, 1968, Pub. L. 90–263, § 1, 82 Stat. 42; July 29, 1970, Pub. L. 91–358, § 144(1), title I, 84 Stat. 553.)

AMENDMENTS

1970—Section 144(1) of Act July 29, 1970, Pub. L. 91–358, amended paragraph (2) of subsection (a) to read as follows:

"(2) Superior Court of the District of Columbia,". Paragraph (2) prior to this amendment, read as follows: "(2) District of Columbia Court of General Sessions—".

1968—Section 1, act Mar. 11, 1968, Pub. L. 90–263 amended the first sentence of subsection (a) to read as set out in Supplements II and III of the 1967 edition. For provisions of this sentence prior to this amendment, see the main edition.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 4(a), act Mar. 11, 1968, Pub. L. 90–263, provided that the amendments made to this section and section 15–102 "shall apply only with respect to judgments or decrees rendered in, or recognizances declared forfeited by, the United States District for the District of Columbia on and after April 1, 1968."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–578.

§ 15–102. Lien of judgment, decree, or forfeited recognizance

(a) Each—

(1) final judgment or decree for the payment of money rendered in the United States District Court for the District of Columbia, or the Superior Court of the District of Columbia, from the date such judgment or decree is filed and recorded in the office of the Recorder of Deeds of the District of Columbia, and

(2) recognizance taken by the United States District Court for the District of Columbia, or the Superior Court of the District of Columbia, from the date the entry or order of forfeiture of such recognizance is filed and recorded in the office of the Recorder of Deeds of the District of Columbia,

shall constitute a lien on all the freehold and leasehold estates, legal and equitable, of the defendants bound by such judgment, decree, or recognizance, in any land, tenements, or hereditaments in the District of Columbia, whether the estates are in possession or are reversions or remainders, vested or contingent. Such liens on equitable interest may be enforced only by an action to foreclose.

(b) * * *

(As amended Mar. 11, 1968, Pub. L. 90–263, § 2, 82 Stat. 42; July 29, 1970, Pub. L. 91–358, § 144(2), title I, 84 Stat. 553.)

AMENDMENTS

1970—Section 144(2) of Act July 29, 1970, Pub. L. 91–358 amended section by striking out "District of Columbia Court of General Sessions" wherever it appears and inserting in lieu thereof "Superior Court of the District of Columbia".

1968—Section 2(a) (there is no section 2(b) in the Act) act Mar. 11, 1968, Pub. L. 90–263, amended subsection (a) to read as above set out. For provisions of subsection prior to this amendment see the main edition.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATE OF 1968 AMENDMENT

See note under section 15–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 15–103) is referred to in section 45–708.

§ 15–104. Priority of liens

NOTES TO DECISIONS

Priority to surplus on foreclosure

In this case, the court held that the holder of purchase-money deed of trust (containing provision that it should be subordinate to any construction loan and all advances made under construction loan) is entitled, on foreclosure of first deed of trust held by construction lender, to priority with respect to surplus remaining after satisfaction of construction lender's debt and payment of foreclosure expenses, notwithstanding construction lender's claim to surplus to satisfy mechanic's lien it had paid against property. *Guardian Federal Savings & Loan Association* v. *H. P. Suskind* (D.C. App. 1970, 265 A. 2d 295).

§ 15–108. Interest on judgment for liquidated debt

In an action in the United States District Court for the District of Columbia or the Superior Court of the District of Columbia to recover a liquidated debt on which interest is payable by contract or by law or usage the judgment for the plaintiff shall include interest on the principal debt from the time when it was due and payable, at the rate fixed by the contract, if any, until paid. (As added Aug. 30, 1964, 78 Stat. 677, Pub. L. 88–509, § 3(b)(1); and amended July 29, 1970, Pub. L. 91–358, title I, § 144(3), 84 Stat. 553.)

AMENDMENT

1970—Section 144(3) of Act July 29, 1970, Pub. L. 91–358, amended section by inserting "or the Superior Court of the District of Columbia" after "District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 15–109. Interest on judgment for damages in contract or tort

NOTES TO DECISIONS

Abuse of discretion

Under this section authorizing inclusion of interest in damages awarded in action on contract if necessary to fully compensate the plaintiff, since the home purchasers had to borrow money to replace defective furnace system that had been guaranteed to be in good working condition at time of settlement, inclusion of interest charged for borrowing money to replace furnace as a part of purchasers' damages was not abuse of discretion. *G. H. Noel et ano.* v. *R. E. O'Brien et ano.* (D.C. App. 1970, 270 A. 2d 350).

§ 15–111. Counsel fee in proceeding on bond or undertaking

In a proceeding in the United States District Court for the District of Columbia or the Superior Court of the District of Columbia to recover damages upon a bond or undertaking given to obtain a restraining order or preliminary or pendente lite injunction, the Court, in assessing damages to be recovered thereunder, may include such reasonable counsel fees as the party damaged by the restraining order or injunction may have incurred in obtaining a dissolution thereof. (As added Aug. 30, 1964, 78 Stat. 678, Pub. L. 88–509, § 3(b)(1); and amended July 29, 1970, Pub. L. 91–358, title I, § 144(3), 84 Stat. 553.)

AMENDMENT

1970—Section 144(3) of Act July 29, 1970, Pub. L. 91–358, amended section by inserting "or the Superior Court of the District of Columbia" after "District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§§ 15–131 to 15–133. Repealed. July 29, 1970, Pub. L. 91–358, § 144(4)(A), title I, 84 Stat. 553

Sections, act Dec. 23, 1963, Pub. L. 88–241, § 1, as amended; dealt with jurisdiction of Court of General Sessions to enter judgment in civil cases tried before it; issue writs of execution; enforceable period of unrecorded judgments; recordation thereof; transcripts thereof and satisfaction of judgments.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

NOTES TO DECISIONS UNDER FORMER § 15–131

Construction

In this case, the court held that, by use of statutory language that judgment could provide that interest run from date earlier than judgment, Congress did not intend to abrogate the common law rule that right to receive interest on liquidated debt accrues from date debt was due, and that the beneficiary of group life policy was entitled to interest on the liquidated claim from date proof of death was furnished. *S. P. McIntosh* v. *Aetna Life Insurance Company* (D.C. App. 1970, 268 A. 2d 518).

Chapter 3.—ENFORCEMENT OF JUDGMENTS AND DECREES

AMENDMENT

1970—Section 144(6)(C) amended the analysis by striking out the item relating to section 15–310.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 15–301. Definition and applicability

As used in sections 15–302, 15–303, 15–305 to 15–307, 15–309, 15–317, and 15–318, "judgment" includes an unconditional decree for the payment of money, and sections 15–302 to 15–318 are applicable to such a decree. (Dec. 23, 1963, 77 Stat. 525, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 144(6)(B), 84 Stat. 553.)

AMENDMENT

1970—Section 144(6)(B) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "15–310,".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 15–302. Period during which writ of execution may issue; returnable period

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15–301, 15–303.

§§ 15–303 to 15–306

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 15–301.

§ 15–307. Lien of execution

A writ of fieri facias issued upon a judgment of the United States District Court for the District of Columbia or the Superior Court of the District of Columbia is a lien from the time of its delivery to the marshal upon all the goods and chattels of the judgment defendant, except those that are exempted from levy and sale by express provision of law, and is also a lien upon the equitable interest of the judgment defendant in goods and chattels in his possession. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 144(5), 84 Stat. 553.)

AMENDMENT

1970—Section 144(5) of Act July 29, 1970, Pub. L. 91–358, amended section by inserting "or the Superior Court of the District of Columbia" after "United States District Court for the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15–301.

§§ 15–308, 15–309

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 15–301.

§ 15–310. Repealed. July 29, 1970, Pub. L. 91–358, § 144 (6)(A), title I, 84 Stat. 533

Section, Act of Dec. 23, 1963, Pub. L. 88–241, § 1, as amended, dealt with subject matter of the lien of an execution issued on a judgment of the District of Columbia Court of General Sessions and the circumstances under which the execution could be levied on real estate.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

§ 15–311. Property subject to levy

The writ of fieri facias may be levied on all goods and chattels of the debtor not exempt from execution, and upon money, bills, checks, promissory notes, or bonds, or certificates of stock in corporations owned by the debtor, and upon his money in the hands of the marshal or his deputy or other officer or person charged with the execution of the writ. A writ of fieri facias issued from the United States District Court for the District of Columbia or the Superior Court of the District of Columbia upon a judgment entered in such court may be levied on all legal leasehold and freehold estates of the debtor in land, but only after such judgment has been filed and recorded in the office of the Recorder of Deeds of the District of Columbia. (Dec. 23, 1963, 77 Stat. 526, Pub. L. 88–241, § 1, eff. Jan. 1, 1963; July 5, 1966, 80 Stat. 264, Pub. L. 89–493, § 12; Nov. 2, 1966, 80 Stat. 1178, Pub. L. 89–745, § 5; Mar. 11, 1968, Pub. L. 90–263, § 3, 82 Stat. 42; July 29, 1970, Pub. L. 91–358, § 144(7), title I, 84 Stat. 553.)

AMENDMENTS

1970—Section 144(7) of Act July 29, 1970, Pub. L. 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu "Superior Court of the District of Columbia".

1968—Section 3, act Mar. 11, 1968, Pub. L. 90–263, amended section to read as above set out. For provisions of section prior to this amendment, see the main edition.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 4(b), act Mar. 11, 1968, Pub. L. 90–263, provided that the amendments made by section 3 thereof, "shall apply only with respect to writs of fieri facias issued by the United States District Court for the District of Columbia on and after April 1, 1968".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15–301.

§§ 15–312 to 15–317

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 15–301.

§ 15–318. Remedies of purchaser upon refusal to deliver possession

When real property is sold by virtue of an execution, and the judgment debtor or a person claiming under him since the rendition of the judgment is in actual possession of the property and refuses to deliver possession thereof to the purchaser upon demand made therefor, the court, on the application of the purchaser, may:

(1) require the person so in possession to show cause why possession should not be delivered according to the demand; and

(2) if good cause is not shown, issue a writ of habere facias possessionem, requiring the marshal to put the purchaser in possession.

If the party in possession alleges under oath a title derived from the judgment debtor prior to the judgment or a title superior to that of the defendant, the writ may not issue, but the purchaser may have his remedy by an action of ejectment or the summary remedy in the Superior Court of the District of Columbia provided for in sections 16–1501 to 16–1505. (Dec. 23, 1963, 77 Stat. 527, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 144(7), 84 Stat. 553.)

AMENDMENT

1970—Section 144(7) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15–301.

§ 15–320. Enforcement of decrees

(a) For the purpose of executing a decree, or compelling obedience to it, the United States District Court for the District of Columbia or the Superior Court of the District of Columbia, in addition to the other procedures provided for by this chapter and chapter 5 of Title 16, may:

(1) issue an attachment against the person of the defendant;

(2) order an immediate sequestration of his real and personal estate, or such part thereof as may be necessary to satisfy the decree; or

(3) by order and injunction, cause the possession of the estate and effects whereof the possession or a sale is decreed to be delivered to the complainant, or otherwise, according to the tenor and import of the decree and as the nature of the case requires.

In case of sequestration, the court may order payment and satisfaction to be made out of the estate and effects so sequestrated, according to the true intent and meaning of the decree.

(b) When a defendant is arrested and brought into court upon any process of contempt issued to compel the performance of a decree, the court may, upon motion, order:

(1) the defendant to stand committed; or

(2) his estates and effects to be sequestrated and payment made, as directed by subsection (a) of this section; or

(3) possession of his estate and effects to be delivered by order and injunction, as directed by subsection (a) of this section—

until the decree or order is fully performed and executed, according to the tenor and true meaning thereof, and the contempt cleared.

(c) Where a decree only directs the payment of money, the defendant may not be imprisoned except in those cases especially provided for. (Dec. 23, 1963, 77 Stat. 528, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 144(7), 84 Stat. 553.)

AMENDMENT

1970—Section 144(7) of Act July 29, 1970, Pub. L. 91–358 amended section by striking out, "District of Columbia Court of General Sessions" and inserting in lieu, "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS

Judgment of specific performance of support agreement

Trial court could not commit husband for his contemptuous failure to comply with order for specific performance of agreement to pay wife $200 monthly for her support though husband was able to make such payments but deliberately refused to carry out his agreement and money judgments against him could not be collected by ordinary process. *C. M. O'Mara* v. *R. M. O'Mara* (D.C. App. 1968, 238 A. 2d 586).

Chapter 5.—EXEMPTIONS AND TRIAL OF RIGHT TO SEIZED PROPERTY

SUBCHAPTER I.—EXEMPTIONS

Sec.
15–501. Exempt property of householder; property in transitu; debt for wages.
15–502. Mortgage or other instrument affecting exempt property.
15–503. Earnings and other income; wearing apparel and tools of certain persons.

SUBCHAPTER II.—TRIAL OF RIGHT TO PROPERTY SEIZED ON PROCESS OF SUPERIOR COURT

15–521. Notice of claim or exemption; trial.
15–522. Docketing of claim; manner of trial.
15–523. Judgment.
15–524. Replevin against officer.

AMENDMENT

1970—Section 144(8)(B) of Act July 29, 1970, Pub. L. 91–358 amended subchapter II heading in the analysis by striking "Court of General Sessions" and inserting "Superior Court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SUBCHAPTER I.—EXEMPTIONS

§ 15–501. Exempt property of householder; property in transitu; debt for wages

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–706.

NOTES TO DECISIONS

Appealable orders

An order which denies a motion to quash an attachment is not final and hence not generally appealable, unless possession of property is changed or affected. *G. F. Ludington et ano.* v. *R. Bogdonoff* (D.C. App. 1969, 256 A. 2d 921).

In this case possession of property was not affected by the denial of intervenors' motion to quash attachment, and appeal from order denying motion was premature and District of Columbia Court of Appeals was without jurisdiction of appeal. *Id.*

§ 15–502. Mortgage or other instrument affecting exempt property

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–706.

§ 15–503. Earnings and other income; wearing apparel and tools of certain persons

(a) The earnings (other than wages, as defined in subchapter III of chapter 5 of Title 16), insurance, annuities, or pension or retirement payments, not otherwise exempted, not to exceed $200 each month, of a person residing in the District of Columbia, or of a person who earns the major portions of his livelihood in the District of Columbia, regardless of place of residence, who provides the principal support of a family, for two months next preceding the issuing of any writ or process against him, from any court or officer of and in the District, are exempt from attachment, levy, seizure, or sale upon the process, and may not be seized, levied on, taken, reached, or sold by process or proceedings of any court, judge, or other officer of and in the District. Where husband and wife are living together, the aggregate of the earnings, insurance, annuities, and pension or retirement payments of the husband and wife is the amount which shall be determinative of the exemption of either in cases arising ex contractu.

(b) The earnings (other than wages, as defined in subchapter III of chapter 5 of Title 16), insurance, annuities, or pension or retirement payments, not otherwise exempt, not to exceed $60 each month for two months preceding the date of attachment of persons residing in the District of Columbia, or of persons who earn the major portions of their livelihood in the District of Columbia, regardless of place of residence, who do not provide for the support of a family, are entitled to like exemption from attachment, levy, seizure, or sale. All wearing apparel belonging to such persons, not exceeding $300 in value, and mechanic's tools not exceeding $200 in value, are also exempt.

(c) Notwithstanding any other provision of law, the wages (as defined in section 16–571 of the District of Columbia Code) of any person not residing in the District of Columbia who does not earn the major portion of such wages in the District of Columbia shall, in any case arising out of a contract or transaction entered into outside of the District of Columbia, be exempt from attachment, levy, or seizure, by any process or proceeding of any court, judge, or officer of the District of Columbia in the same amount and to the same extent as is provided by law of the State in which such person resides for persons residing therein. Whenever any claim is made for an exemption from attachment pursuant to this subsection, the burden shall be upon the plaintiff to prove that the contract or transaction involved in the case was entered into within the District of Columbia.

(d) A notice of claim of exemption, or motion to quash attachment or other process against exempt property or money, may be filed in the office of the clerk of the court either by the debtor, his spouse, or a garnishee. Thereupon, the court, after due notice, shall promptly act upon the notice, motion,

or other claim of exemption. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Oct. 21, 1970, Pub. L. 91–475, 84 Stat. 1066.)

AMENDMENT

1970—Act Oct. 21, 1970, Pub. L. 91–475, amended section by redesignating subsec. (c) as subsec. (d) and inserting a new subsec. (c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–706.

SUBCHAPTER II.—TRIAL OF RIGHT TO PROPERTY SEIZED ON PROCESS OF SUPERIOR COURT

AMENDMENT

1970—Section 144(8)(A)(ii) of Act July 29, 1970, Pub. L. 91–358, amended subchapter II heading, by striking out "Court of General Sessions" and inserting "Superior Court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 15–521. Notice of claim or exemption; trial

When personal property taken on execution or other process issued by the Superior Court of the District of Columbia is claimed by a person other than the defendant therein, or is claimed by the defendant to be property exempt from execution, and the claimant gives written notice to the marshal of his claim, or the defendant gives notice, in writing, that the property is exempt, the marshal shall notify the plaintiff of the claim and return the notice to the court, and a trial of the right of property, or the question of exemption, shall be had before the court. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 144(8)(A)(i), 84 Stat. 553.)

AMENDMENT

1970—Section 144(8)(A)(i) of Act July 29, 1970, Pub. L. 91–358, amended section by striking "District of Columbia Court of General Sessions" and inserting "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 11–744) is referred to in sections 15–522, 15–523.

§ 15–522. Docketing of claim; manner of trial

The case made by the claim referred to in section 15–521 shall be entered on the docket as an action by the claimant or the defendant against the plaintiff and tried in the same manner as other cases before the Superior Court of the District of Columbia. (Dec. 23, 1963, 77 Stat. 530, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 144(8)(A)(i), 84 Stat. 553.)

AMENDMENT

1970—Section 144(8)(A)(i) of Act July 29, 1970, Pub. L. 91–358, amended section by striking "District of Columbia Court of General Sessions" and inserting "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 7.—FEES AND COSTS

Sec.

15–701. Compensation taxed as costs; attorneys' compensation from clients.
15–702. Docket fees of attorneys and proctors.
15–703. Deposit for costs; security for costs by non-residents.
15–704. Advance payment of costs and fees.
15–705. Exemption of District of Columbia and United States from fees, costs, and bonds.
15–706. Clerk's fees in United States District Court for the District of Columbia.
15–707. Probate fees.
15–708. Deposit for probate fees.
15–709. Fees and costs in Superior Court.
15–711. Deposit or security for costs in Superior Court.
15–712. Waiver of prepayment of costs in Superior Court.
15–713. Deposits for jury trials in Superior Court.
15–714. Witness fees for attendance in Superior Court.
15–715. Witness fees in prosecutions for cruelty to children or animals.
15–717. Marriage license and related fees.

AMENDMENTS

1970—Section 144(10)(B) of Pub. L. 91–358, amended the item relating to section 15–707, by striking "Court".

Section 144(11)(B) of Pub. L. 91–358 amended the item relating to section 15–708 by striking out "court".

Section 144(12)(B) of Pub. L. 91–358, amended the item relating to section 15–709 to read as above set out.

Section 144(13) of Pub. L. 91–358, repealed the item relating to section 15–710.

Sections 144(14)(B) and (15)(B) of Pub. L. 91–358 amended the items relating to sections 15–711 to 15–714 by striking "Court of General Sessions" and inserting "Superior Court".

Section 144(16) of Pub. L. 91–358 repealed the item relating to section 15–716.

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

§ 15–702. Docket fees of attorneys and proctors

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15–709.

§ 15–703. Deposit for costs; security for costs by non-residents

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15–711.

§ 15–706. Clerk's fees in United States District Court for the District of Columbia

(a) For filing the following-named cases and for all services to be performed therein, except as otherwise provided by law, the clerk of the United States District Court for the District of Columbia shall charge and collect the following fees:

(1) civil actions, $10;
(2) lunacy cases, $10;
(3) deportation cases, $10;
(4) requisition cases, $10;
(5) habeas corpus cases, $10;
(6) plea of title cases, $10;
(7) District court cases, $15;
(8) condemnation cases, $15;
(9) libel cases, $15;
(10) feeble-minded cases, $7.50;
(11) change of name cases, $5;
(12) intervening petitions in any case, $5;
(13) cases substituting trustees, $4; and
(14) limited partnership cases, $3.

(b)–(e) * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 144(9), 84 Stat. 553.)

AMENDMENT

1970—Section 144(9) of Act July 29, 1970, Pub. L. 91–358, amended subsection (a):

(A) by striking out paragraph (14),

(B) by inserting "and" at the end of paragraph (13), and

(C) by redesignating paragraph (15) as paragraph (14).

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15–704.

§ 15–707. Probate fees

(a) Except as provided in subsection (b), the Register of Wills may demand and receive in advance for services performed by him such fees as shall be set by the Superior Court.

(b) Where the estate does not exceed two hundred dollars in value the Register of Wills shall receive no fees, and where the estate does not exceed five hundred dollars in value the fees may not exceed ten dollars. (Dec. 23, 1963, 77 Stat. 534, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, § 144(10)(A), title I, 84 Stat. 553.)

AMENDMENT

1970—Section 144(10)(A) of Act July 29, 1970, Pub. L. 91–358, amended section to read as above set out. For provisions of section prior to this amendment see 1967 edition and Supp. III, thereto.

EFFECTIVE DATES OF AMENDMENTS TO CERTAIN MISCELLANEOUS SECTIONS

Section 199(b)(3)(B) of Pub. L. 91–358 provided that certain amendments shall take effect as follows: (B) Immediately following the expiration of the thirty-month period beginning on such date in the case of amendments made by sections 144(10), 145(b)(2), 145(k)(1), 145(l), 147(1), 148(2), 149(2), 149(4), 149(6), and 150(a).

[The D.C. Code sections amended by the above enumerated sections of Pub. L. 91–358, are: 15–707, 16–516, 16–549, 16–2901, 16–2921, 16–3101, 16–3103, 16–3104, 16–3105, 16–3106, 18–101, 19–115, 20–312, 20–337, 20–364, 20–501, 20–1110, 21–112, 21–115, 21–158.]

§ 15–708. Deposit for probate fees

For proceedings in probate deposits and fees shall be paid to the Register of Wills.

Upon the presentation for filing of a petition or a caveat to a will, he may require a deposit for his fees to be charged for the proceedings under the petition or caveat. Upon the deposit becoming exhausted in the liquidation of his fees so charged, he may require a further deposit from the original petitioner or caveator. The deposits may not be required in excess of fifteen dollars at any one time. (Dec. 23, 1963, 77 Stat. 535, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 144(11)(A), 84 Stat. 554.)

AMENDMENT

1970—Section 144(11)(A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "the probate court" in the first sentence and inserting in lieu thereof "probate", and by striking out "court" in the section heading.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 15–709. Fees and costs in Superior Court

(a) The Superior Court of the District of Columbia may prescribe fees and costs, including the fee to be paid for a jury trial. Section 15–702(a), relating to docket fees of attorneys and proctors, does not apply to the Superior Court.

(b) Fees for services by the United States marshals for processes issued by the Superior Court shall be prescribed by rules of that court. (Dec. 23, 1963, 77 Stat. 535, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 144(12)(A), 84 Stat. 554.)

AMENDMENT

1970—Section 144(12)(A) of Act July 29, 1970, Pub. L. 91–358, amended section as follows:

(i) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia",

(ii) by striking out "the Court of General Sessions" and inserting in lieu thereof "the Superior Court",

(iii) by amending subsection (b) to read as above set out; and

(iv) by amending the section heading to read as above set out.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS

Transcript

Since, by motion for transcript, public funds may be expended for that purpose, a copy of motion for transcript should be served on United States attorney. *J. McKelton* v. *J. E. Bruno* (D.C. App. 1970, 264A, 2d 493).

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 11–722, 11–748) is referred to in sections 15–713.

§ 15–710. Repealed. July 29, 1970, Pub. L. 91–358, § 144(13), title I, 84 Stat. 554

Section, being a part of section 1 of the Act of Dec. 23, 1963, Pub. L. 88–241, dealt with fees and costs in the Domestic Relations Branch of the Court of General Sessions.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

§ 15–711. Deposit or security for costs in Superior Court

Nonresidents of the District of Columbia may commence suits in the Superior Court of the District of Columbia without first giving security for costs, but upon motion may be required to give security pursuant to section 15–703. (Dec. 23, 1963, 77 Stat. 535, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 144(14), 84 Stat. 554.)

AMENDMENT

1970—Section 144(14)(A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "'Superior Court of the District of Columbia". Sec. 144(14)(B) of the same Act amended the section heading by striking "Court of General Sessions" and inserting "Superior Court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 15–712. Waiver of prepayment of costs in Superior Court

When satisfactory evidence is presented to the Superior Court of the District of Columbia or one of the judges thereof that the plaintiff in a suit is indigent and unable to make deposit of costs, the court or judge may permit the prosecution of the suit without the prepayment or deposit of costs. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 144(14), 84 Stat. 554.)

AMENDMENTS

1970—Section 144(14)(A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

Section 144(14)(B) of the same Act amended the section heading by striking "Court of General Sessions" and inserting "Superior Court".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

NOTES TO DECISIONS

Abuse of discretion

It is an abuse of discretion for trial courts to use criteria in passing on in forma pauperis applications that in effect set up more restrictive divorce grounds than are prescribed by statute. *H. Harris* v. *G. H. Harris* (1970, 424 F. 2d 806, 137 U.S. App. D.C. 318).

Attorney fees

Indigents bringing divorce suits in forma pauperis are not required to pay the $100 minimum attorney's fees. *H. Harris* v. *G. H. Harris* (1970, 424 F. 2d 806, 137 U.S. App. D.C. 318).

Construction

Under the District of Columbia Code, in forma pauperis relief is not limited to those who are public charges or absolutely destitute. *H. Harris* v. *G. H. Harris* (1970, 424 F. 2d 806, 137 U.S. App. D.C. 318).

The obvious intent of this section is to make available to indigent, in common with his fellow citizen, full range of civil remedies contrived by court or legislature, including what appeared to be meritorious cases for divorce. *Id.*

This section should be construed to permit indigents to proceed in good faith with nonfrivolous claims for divorce. *Id.*

In view of the provisions of this section, it is not proper to use inability of divorce applicant to pay costs of divorce action as ground for denying applicant access to fair trial. *Id.*

One of the objectives in enacting this section is to give rich and poor alike equal right to divorce. *Id.*

Divorce actions

This section does not exclude divorce actions. *H. Harris* v. *G. H. Harris* (1970, 424 F. 2d 806, 137 U.S. App. D.C. 318).

Indigency

In this case, the court held that the wife, who brought suit for divorce, was indigent, so as to be entitled to proceed under this section, since she was mother of five children, and her total income was $220 per month, recently increased to $229 per month, from Department of Public Welfare. *H. Harris* v. *G. H. Harris* (1970, 424 F. 2d 806, 137 U.S. App. D.C. 318).

A wife, who brought divorce suit, was indigent, so that she could proceed under this section, since her take-home pay was $70 per week, or about $300 per month, and her living expenses were $299, counting $51 per month which she had to pay on debts totaling $620. *Id.*

Publication

When publication is required, the court, unless the situation otherwise dictates, should order publication in newspapers only for minimum number of times fixed by statute for publication and in the most economical form of suitable publication. *H. Harris* v. *G. H. Harris* (1970, 424 F. 2d 806, 137 U.S. App. D.C. 318).

Publication costs

The costs of publication are paid to newspapers and not to an arm of the court and are not one of the costs covered by this section. *H. Harris* v. *G. H. Harris* (1970, 424 F. 2d 806, 137 U.S. App. D.C. 318).

Public policy

The public policy of the District of Columbia is not against divorce in divorce applications by indigent plaintiffs. *H. Harris* v. *G. H. Harris* (1970, 424 F. 2d 806. 137 U.S. App. D.C. 318).

Transcripts

Under section 11–935 (now 11–1727(b)) imposing duty to equate rules, practice and procedure relating to fees for transcripts in Court of General Sessions as nearly as practicable to those in United States District Court for District of Columbia and 28 U.S.C. 753 determining litigant's eligibility for free transcript in district court, and on proper certification by judge, the United States must pay for transcripts or essential portions thereof for indigent litigants allowed to appeal in forma pauperis to District of Columbia Court of Appeals. *O. Lee* v. *N. Habib* (1970, 424 F. 2d 891, 137 U.S. App. D.C. 403).

Doubts about substantiality of the questions on indigents' appeal and need for transcript at governmental expense to explore them should be resolved in favor of indigents. *Id.*

Judges should give due consideration to indigents' motions for transcripts in cases where the law appears to be settled but where appellant is able to show that his chances of changing the law on appeal are strong. *Id.*

§ 15–713. Deposits for jury trials in Superior Court

Deposits made on demands for jury trials in accordance with rules prescribed by the Superior Court of the District of Columbia under authority granted in section 15–709 shall be earned unless, prior to three days before the time set for trial, including Sundays and legal holidays, a new date for trial is set by the court, cases are discontinued or settled, or demands for jury trials are waived. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 144(14), 84 Stat. 554.)

AMENDMENTS

1970—Section 144(14)(A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

Section 144(14)(B) of the same Act amended the section heading by striking "Court of General Sessions" and inserting "Superior Court".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

§ 15–714. Witness fees for attendance in Superior Court

(a) The fees and travel allowances to be paid any witness attending in a criminal case in the Superior Court of the District of Columbia shall be the same as those paid to witnesses who attend before the United States District Court for the District of Columbia.

(b) The fees and travel allowances to be paid any witness compelled by subpoena to attend any branch of the Superior Court of the District of Columbia other than the criminal division shall be the same amount as paid a witness compelled to attend before the United States District Court for the District of Columbia.

(c) No travel allowance shall be paid to any witness residing within the District of Columbia. (Dec. 23, 1963, 77 Stat. 536, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Dec. 27, 1967, Pub. L. 90–226, title VIII, § 803(a), 81 Stat. 742; July 29, 1970, Pub. L. 91–358, title I, § 144(15)(A), 84 Stat. 554.)

AMENDMENTS

1970—Section 144(15)(A) of Act July 29, 1970, Pub. L. 91–358, amended section (1) by striking out "District of Columbia Court of General Sessions" in subsections (a) and (b) and inserting in lieu thereof "Superior Court of the District of Columbia";

(ii) by adding after subsection (b) a new subsection (c) to read as above set out; and

(iii) by striking out "Court of General Sessions" in the section heading and inserting in lieu thereof "Superior Court".

1967—Section 803(a) of Pub. L. 90–226 amended subsection (a) to read as above set out. For provisions of

this subsection prior to this amendment see main edition of the code.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967

Section 1101, Act Dec. 27, 1967, Pub. L. 90–226, provided: Whoever, prior to the date of enactment of this Act [Pub. L. 90–226], commits any act or engages in any conduct which constitutes an offense under provision of law amended by this Act [Amendments of sections 4–140, 15–714, 15–716, 22–501, 22–703, 22–1513, 22–1801, 22–2001, 22–2901, 22–3105, 22–3201, 22–3202, 23–610, 23–901, 23–903, 24–301 and enactments of sections 4–140a, 4–150a and 22–1122, and amendments of 18 U.S.C. 4122, 5024 and 5025], shall be sentenced in accordance with the law in effect on the date he commits such acts or engages in such conduct.

SEPARABILITY OF PROVISIONS

Section 1102, Act Dec. 27, 1967, Pub. L. 90–226, provided: If any provision of or any amendment made by this Act [Pub. L. 90–226; for amendments made by this Act, see enumeration in note above, under heading, "Sentence for offenses committed prior to Dec. 27, 1967."] or the application thereof to any person or circumstance is held invalid, the other provisions of or other amendments made by this Act and the application of such provisions and amendments to other persons or circumstances shall not be affected thereby.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1527.

§ 15–716. Repealed. July 29, 1970, Pub. L. 91–358, § 144 (16), title I, 84 Stat. 554

Section, a part of section of the Act of Dec. 23, 1963, Pub. L. 88–241, as amended, dealt with the subject of advances for witness fees to the Clerk of the Court of General Sessions.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

§ 15–717. Marriage license and related fees

For each marriage license, the fee shall be $2; for each certified copy of a marriage license return, the fee shall be $1; for each certified copy of application for marriage license the fee shall be $1; and for registering authorizations to perform marriages and issuing certificate, the fee shall be $1.

The Superior Court of the District of Columbia may, by rule of court, increase or decrease fees provided by this section. (As added July 5, 1966, 80 Stat. 265, Pub. L. 89–493, § 13(d)(2); and amended July 29, 1970, Pub. L. 91–358, title I, § 144(17), 84 Stat. 554.)

AMENDMENT

1970—Section 144(17) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TITLE 16.—PARTICULAR ACTIONS, PROCEEDINGS AND MATTERS

Chap. Sec.

10. Proceedings Regarding Intrafamily Offenses 16–1001

23. Family Division Proceedings..... 16–2301

39. Small Claims and Conciliation Procedure in Court of General Sessions [1]..... 16–3901

AMENDMENTS

1970—Section 131(b) of Act July 29, 1970, Public Law 91–358 amended analysis by adding chapter 10 thereto.

Section 121(b) of Act July 29, 1970, Public Law 91–358, amended analysis with respect to chapter 25 by striking out "Juvenile Court" and inserting in lieu thereof "Family Division".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding sections 11–101, 15–320.

Chapter 3.—ADOPTION

§ 16–301. Jurisdiction; rules

(a) Subject to subsection (b) of this section, the Superior Court of the District of Columbia has jurisdiction to hear and determine petitions and decrees of adoption of any adult or child with authority to make such rules, not inconsistent with this chapter, as shall bring fully before the court for consideration the interests of the prospective adoptee, the natural parents, the petitioner, and any other properly interested party.

(b) Jurisdiction shall be conferred when any of the following circumstances exist:

(1) petitioner is a legal resident of the District of Columbia;

(2) petitioner has actually resided in the District for at least one year next preceding the filing of the petition; or

(3) the child to be adopted is in the legal care, custody, or control of the Commissioner or a child-placing agency licensed under the laws of the District.

(Dec. 23, 1963, 77 Stat. 537, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 31, 1970, Pub. L. 91–358, title I, § 145(a)(1), 84 Stat. 555.)

AMENDMENT

1970—Section 145(a)(1) of Act July 29, 1970, Pub. L. 91–358, amended section:

(A) by striking out "Domestic Relations Branch of the District of Columbia Court of General Sessions" in subsection (a) and inserting in lieu thereof "Superior Court of the District of Columbia"; and

(B) by striking out "Commissioners" in subsection (b)(3) and inserting in lieu thereof "Commissioner".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

[1] Chapter heading was amended by § 145(p)(1) of act July 29, 1970, Pub. L. 91–358, without corresponding amendment in analysis.

§ 16–304. Consent

(a) A petition for adoption may not be granted by the court unless there is filed with the petition a written statement of consent, as provided by this section, signed and acknowledged before an officer authorized by law to take acknowledgments, before a representative of a licensed child-placing agency, or before the Commissioner of the District, or unless a relinquishment of parental rights with respect to the prospective adoptee has been recorded and filed as provided by section 32–786.

(b) Consent to a proposed adoption of a person under twenty-one years of age is necessary:

(1) from the prospective adoptee, if he is fourteen years of age or over; and also,

(2) in accordance with the provisions of any one of the following paragraphs:

(A) from both parents, if they are or were married and are both alive; or

(B) from the living parent of the prospective adoptee, if one of the parents is dead; or

(C) from the mother in the case of a prospective adoptee born out of wedlock, unless the prospective adoptee has been legitimated according to the laws of the District of Columbia, in which case the consent of the father is also required if he is alive; or

(D) from the mother of a prospective adoptee born in wedlock, if the illegitimacy of the prospective adoptee has been established to the satisfaction of the court; or

(E) from the court-appointed guardian of the prospective adoptee; or

(F) from a licensed child-placing agency or the Commissioner in case the parental rights of the parent or parents have been terminated by a court of competent jurisdiction or by a release of parental rights to the Commissioner or licensed child-placing agency, based upon consents obtained in accordance with paragraphs (A) through (E) of this subdivision, and the prospective adoptee has been lawfully placed under the care and custody of the agency or the Board; or

(G) from the Commissioner in any situation not otherwise provided for by this subsection.

(c) Minority of a natural parent is not a bar to that parent's consent to adoption.

(d) When a parent whose consent is hereinbefore required, after such notice as the court directs, cannot be located, or has abandoned the prospective adoptee and voluntarily failed to contribute to his support for a period of at least six months next preceding the date of the filing of the petition, the consent of that parent is not required.

(e) The court may grant a petition for adoption without any of the consents specified in this section,

when the court finds, after a hearing, that the consent or consents are withheld contrary to the best interests of the child.

(f) A person over twenty-one years of age may be adopted, on the petition of the adopting parent or parents and with the consent of the prospective adoptee, if the court is satisfied that the adoption should be granted. (Dec. 23, 1963, 77 Stat. 538, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(a)(2), 84 Stat. 555; Oct. 22, 1970, Pub. L. 91–488, 84 Stat. 1086.)

AMENDMENTS

1970—Act Oct. 22, 1970, Pub. L. 91–488, amended subsec. (b)(2)(C) by striking out "according to the laws of any jurisdiction" and inserting in lieu thereof "according to the laws of the District of Columbia".

Section 145(a)(2) of Act July 29, 1970, Pub. L. 91–358, amended section by striking "Board of Commissioners" and "Board" each place they appear and inserting in lieu "Commissioner".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

TRANSFER OF FUNCTIONS

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Guardian ad litem

Refusal to appoint guardian ad litem for infant adoptee in adoption proceeding was not error where all essential facts concerning the child's welfare were presented by prospective adoptors and by department of public welfare which appeared as adoptee's legal guardian. *In re Adoption of a Female Infant* (D.C. App. 1968, 237 A. 2d 468).

In loco parentis

"In loco parentis" is different from adoption in that it is strictly temporary in nature rather than permanent. *A. Fuller* v. *G. Fuller* (D.C. App. 1968, 247 A. 2d 767).

At common law "in loco parentis" had reference to a person who has put himself in situation of lawful parent by assuming obligations incident to parental relation without going through formalities necessary to legal adoption. *Id.*

Prenuptial agreement

Former husband's assurance that prenuptial child of wife would be included as a part of family unit was at most inducement to persuade her to marry him and no more than offer to support her child in the same household and did not amount to either a promise or an agreement to legally adopt the child or to extend support beyond period of marriage. *A. Fuller* v. *G. Fuller* (D.C. App. 1968, 247 A. 2d 767).

Treatment by husband of wife's prenuptial child as his natural child was not tantamount to adoption and husband was not obligated to support child after divorce from child's mother on theory of equitable adoption. *Id.*

Support as constituting adoption

Theory of adoption is based upon proposition that the child is wanted for its own sake, and not upon proposition that it is accepted incidentally as the result of marriage to the mother. *A. Fuller* v. *G. Fuller* (D.C. App. 1968, 247 A. 2d 767).

Taking prenuptial child of wife into family circle, did not effect adoption of child by husband or incur continuing obligation of support. *Id.*

§ 16–305. Petition for adoption

A petition filed for the adoption of a person shall be under oath or affirmation of the petitioner and the titling thereof shall be substantially as follows: "Ex parte in the matter of the petition of_____ _____for adoption." The petition or the exhibits annexed thereto shall contain the following information:

(1) the name, sex, date, and place of birth of the prospective adoptee, and the names, addresses and residences of the natural parents, if known to the petitioner, except that in an adoption proceeding that is consented to by the Commissioner or a licensed child-placing agency, the names, addresses and residences of the natural parents may not be set forth;

(2) the name, address, age, business or employment of the petitioner, and the name of the employer, if any, of the petitioner;

(3) the relationship, if any, of the prospective adoptee to the petitioner;

(4) the race and religion of the prospective adoptee, or his natural parent or parents;

(5) the race and religion of the petitioner;

(6) the date that the prospective adoptee commenced residing with petitioner; and

(7) any change of name which may be desired.

When any of the above facts is unknown to the petitioner, the petitioner shall state this fact. When any of the above facts is known to the Commissioner, or a licensed child-placing agency that as a matter of social policy declines to discolse them to the petitioner, the facts may be disclosed to the court in an exhibit filed by the Commissioner or the agency with the court. If more than one petitioner joins in a petition, the requirements of this section apply to each. (Dec. 23, 1963, 77 Stat. 538, Pub. L. 88–24, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(a)(2), 84 Stat. 555.)

AMENDMENT

1970—Section 145(a)(2) of Act July 29, 1970, Pub. L. 91–358, amended section by striking "Board of Commismissioners" and "Board" each place they appear and inserting in lieu "Commissioner".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Adoption procedures

Formal adoption procedures are for the benefit of the child and they may not be circumvented or substituted by other procedures. *A. Fuller* v. *G. Fuller* (D.C. App. 1968, 247 A. 2d 767).

§ 16–306. Notice of adoption proceedings

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 16–307. Investigation, report, and recommendation

(a) Except as provided by section 16–308, upon the filing of a petition the court shall refer the petition for investigation, report, and recommendation to:

(1) the licensed child-placing agency by which the case is supervised; or

(2) the Commissioner, if the case is not supervised by a licensed child-placing agency.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 145(a)(2), 84 Stat. 555.)

AMENDMENT

1970—Sec. 145(a)(2) of Act July 29, 1970, Pub. L. 91–358, amended subsec. (a)(2) by striking "Board of Commissioners" and inserting in lieu "Commissioner".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–309.

NOTES TO DECISIONS

Guardian ad litem

Refusal to appoint guardian ad litem for infant adoptee in adoption proceeding was not error where all essential facts concerning the child's welfare were presented by prospective adoptors and by department of public welfare which appeared as adoptee's legal guardian. *In re Adoption of a Female Infant* (D.C. App. 1968, 237 A. 2d 468).

§ 16–308. Investigations when prospective adoptee is adult or petitioner is spouse of natural parent

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–307.

§ 16–311. Sealing and inspection of records and papers

NOTES TO DECISIONS

Access to investigative report

Refusal to allow prospective adoptors' attorney access to investigate report in which department of public welfare recommended that petition for adoption be denied because of deterioration in prospective adoptors' marital relationship and serious personality defects in both of them was not an abuse of discretion where trial judge related to the attorney the findings and the information gathered from persons listed as references by prospective adoptors. *In re Adoption of a Female Infant* (D.C. App. 1968, 237 A. 2d 468).

§ 16–312. Legal effects of adoption

NOTES TO DECISIONS

Issue

Public policy, as expressed in this section would be followed, and thus a child adopted by a grandson 12 years after death of testatrix would be considered as "issue" within terms of a will where there was nothing within the four corners of the will which pointed to any preference by testatrix regarding adopted children and where there was no indication of intended discrimination. *The Riggs National Bank of Washington, D.C.* v. *J. V. Summerlin, Jr., et al.* (1969, 300 F. Supp. 1000).

"Issue" defined

Word "issue," as found in two wills which established testamentary trusts the income from which was payable to mother and her issue, included an adopted child of mother, in the absence of a contrary indication of testators' actual intent. *F. G. Johns, Jr., et al.* v. *E. Boardman Cobb et al.* (1968, 402 F. 2d 636, 131 U.S. App. D.C. 85).

§ 16–313. Child as including adopted person

NOTES TO DECISIONS

"Issue" defined

Word "issue," as found in two wills which established testamentary trusts the income from which was payable to mother and her issue, included an adopted child of mother, in the absence of a contrary indication of testators' actual intent. *F. G. Johns, Jr., et al.* v. *E. Boardman Cobb et al.* (1968, 402 F. 2d 636, 131 U.S. App. D.C. 85).

§ 16–314. Birth certificates

(a) Notice of a final decree of adoption shall be sent to the Commissioner. Unless otherwise requested in the petition by the adopters, the Commissioner shall cause to be made a new record of the birth in the new name and with the names of the adopters and shall then cause to be sealed and filed the original birth certificate with the order of the court. The sealed package may be opened only by order of the court.

(b) If the adoption occurred outside the District either before or after August 25, 1937, upon filing with the Commissioner a certified copy of the final decree of adoption, the Commissioner shall cause to be made a new record of the birth in the new name and with the names of the adopters and shall then cause to be sealed and filed the original birth certificate with the certified copy of the final decree of adoption. The sealed package may be opened only by order of a court of competent jurisdiction.

(c) If the birth of the adoptee occurred outside the District the clerk of the court shall, upon petition by the adopter, furnish him with a certified copy of the final decree of adoption.

(d) When an adoption in the District occurred prior to August 25, 1937, the court shall, upon presentation of a motion by a party to the proceedings, order the clerk of the court to seal the records in the proceeding. Upon presentation of a certified copy of the order the Commissioner shall cause to be made a new record of the birth in the new name and with the names of the adopters and shall then cause to be sealed and filed the original birth certificate with the order of the court. The sealed package may be opened only by order of the court. (Dec. 23, 1963, 77 Stat. 541, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(a)(2), 84 Stat. 555.)

AMENDMENT

1970—Section 145(a)(2) of Act July 29, 1970, Pub. L. 91–358, amended section by striking "Board of Commissioners" and "Board" each place they appear and inserting in lieu "Commissioner".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 5.—ATTACHMENT AND GARNISHMENT

Sec.
16–533. Attachment proceedings in Superior Court.
16–578. Superior Court judgments; lapse; validity.

AMENDMENTS

1970—Section 145(b)(3)(B) of Act July 29, 1970, Pub. L. 91–358, amended the item in the section analysis relating to section 16–533 by striking "Court of General Sessions" and inserting "Superior Court".

Section 145(b)(3)(B) of Act July 29, 1970, Pub. L. 91–358, amended the item in the section analysis relating to section 16–578 by striking "Court of General Sessions" and inserting "Superior Court".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

CROSS REFERENCE

Federal restrictions on garnishment effective July 1, 1970, see title 15 U.S.C. § 1671 et seq.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 15–320, 15–503.

SUBCHAPTER I.—ATTACHMENT AND GARNISHMENT GENERALLY

§ 16–501. Attachment before judgment; affidavit and bond

(a) This section applies to any civil action in the United States District Court of the District of Columbia or the Superior Court of the District of Columbia, for the recovery of:

(1) specific personal property;

(2) a debt; or

(3) damages for the breach of a contract, express or implied.

(b)–(f) * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 145(b)(1), 84 Stat. 555.)

AMENDMENT

1970—Section 145(b)(1) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–502, 16–503, 16–505, 16–512.

§ 16–502. Service of notice; publication

(a) A writ issued pursuant to section 16–501 shall require the marshal to serve a notice on the defendant, if he is found in the District, and on any person in whose possession any property or credits of the defendant may be attached, to appear in the court on or before the twentieth day, exclusive of Sundays and legal holidays after service of the notice, and show cause, if any there be, why the property so attached should not be condemned and execution thereof had. The marshal's return shall show the fact of the service.

(b) If the defendant is returned "Not to be found," the notice shall be given by publication to the following effect, namely:

In the United States District Court (Superior Court of the District of Columbia) for the District of Columbia.

A B, plaintiff,
versus
C D, defendant,
} Civil Action No. ———.

The object of this suit is to recover (here state it briefly) and to have judgment of condemnation of certain property of the defendant levied on under an attachment issued in this suit to satisfy the plaintiff's claim.

It is, therefore, this —— day of ———, ordered that the defendant appear in this court on or before the fortieth day, exclusive of Sundays and legal holidays, after the day of the first publication of this order, to defend this suit and show cause why the condemnation should not be had; otherwise the suit will be proceeded with as in case of default.

By the court:

———— ————, Judge.

(c) The order shall be published at least once a week for three successive weeks or oftener, or for such further time and in such manner as the court orders. (Dec. 23, 1963, 77 Stat. 544, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(b)(1), 84 Stat. 555.)

AMENDMENT

1970—Section 145(b)(1) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–508, 16–511.

§ 16–506. Traversing affidavits; quashing writ of attachment; trial of issues

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–529.

§ 16–507. Property subject to attachment; liens; priorities

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–572.

NOTES TO DECISIONS

Attachable funds or credits

Fund or credits must be actually due and ascertainable in amount in order to be subject to garnishment. *Cummings General Tire Co., etc.* v. *Volpe Construction Co., etc., et al.* (D.C. App. 1967, 230 A. 2d 712).

Where attachment failed because garnishee did not owe debtor any money at time of garnishment, attaching creditor could not prevail over subsequent attaching creditor who obtained attachment against the same garnishee for debt due the same debtor but at time when garnishee did owe money to debtor. *Id.*

§ 16–509. Attachment of personal property; undertaking by defendant or person in possession

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–510, 16–527.

NOTES TO DECISIONS

Discharge of codefendant as a discharge of surety

Defendant Dodson who, pursuant to a consent order in lieu of writ of attachment, deposited cash with the court, in doing so acted not only for herself as defendant but also for her codefendants as surety, and was obligated to pay judgment rendered in favor of plaintiff against a codefendant to the extent of the appraised value of the attached property. *P. T. Apostolides t/a etc.* v. *G. Colecchia and M. Dodson* (D.C. App. 1970, 260 A. 2d 685).

Discharge from original action of defendant Dodson who had deposited cash as surety in lieu of writ of attachment, as result of affirmance of judgment in her favor, did not discharge her as surety for a codefendant against whom judgment was later rendered. *Id.*

Effect of statutory bond and undertaking

The effect of our statutory bond and undertaking is "the complete discharge of the attached property from the custody of the law, and the substitution therefor of the personal obligation of the bondsman". *P. T. Apostolides, t/a etc.* v. *G. Colecchia and M. Dodson* (D.C. App. 1970, 260 A. 2d 685).

Release of cash deposit in lieu of bond

Although the plaintiff had not posted a supersedeas bond on his appeal from the judgment for defendants, there was no change in circumstance which would warrant release of the cash deposit which had been made by defendant Dodson pursuant to consent order in lieu of attachment, and this defendant as surety should be required to return the deposit. *P. T. Apostolides, t/a etc.* v. *G. Colecchia and M. Dodson* (D.C. App. 1970, 260 A. 2d 685).

§ 16–510. Release of property or credits from attachment; sufficiency of undertaking

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–527.

NOTES TO DECISIONS

Discharge of codefendant as a discharge of surety

Defendant Dodson who, pursuant to a consent order, in lieu of writ of attachment, deposited cash with the court, in doing so acted not only for herself as defendant but also for her codefendants as surety, and was obligated to pay judgment rendered in favor of plaintiff against a codefendant to the extent of the appraised value of the attached property. *P. T. Apostolides t/a etc.* v. *G. Colecchia and M. Dodson* (D.C. App. 1970, 260 A. 2d 685).

Discharge from original action of defendant Dodson who had deposited cash as surety in lieu of writ of attachment, as result of affirmance of judgment in her favor, did not discharge her as surety for a codefendant against whom judgment was later rendered. *Id.*

Effect of statutory bond and undertaking

The effect of our statutory bond and undertaking is "the complete discharge of the attached property from the custody of the law, and the substitution therefor of the personal obligation of the bondsman". *P. T. Apostolides, t/a etc.* v. *Colecchia and M. Dodson* (D.C. App. 1970, 260 A. 2d 685).

Release of cash deposit in lieu of bond

Although the plaintiff had not posted a supersedeas bond on his appeal from the judgment for defendants, there was no change in circumstance which would warrant release of the cash deposit which had been made by defendant Dodson pursuant to consent order in lieu of attachment, and this defendant as surety should be required to return the deposit. *P. T. Apostolides, t/a etc.* v. *G. Colecchia and M. Dodson* (D.C. App. 1970, 260 A. 2d 685).

§ 16–511. Attachment of credits or partnerships interest; retention of property and credits by garnishee

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–515.

§ 16–512. Attachment and levy upon wages of nonresident

CROSS REFERENCE

Exemption from attachment of wages of nonresident in certain cases, see § 15–503(c).

§ 16–516. Attachment of money or property in hands of executor or administrator

An attachment may be levied upon money or property of the defendant in the hands of an executor or administrator, and binds the same from the time of service. If the executor or administrator makes return to the writ that he can not certainly answer whether the defendant's share of the money or property in his hands will prove sufficient to pay the plaintiff's debt, a judgment of condemnation may not be rendered as against the executor or administrator until the passage by the Superior Court of his final or other account showing money or property in his hands to which the defendant is entitled. (Dec. 23, 1963, 77 Stat. 548, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(b)(2), 84 Stat. 555.)

AMENDMENT

1970—Section 145(b)(2) of Act July 29, 1970, Pub. L. 91–358 amended section by striking out "Probate Court" and inserting in lieu thereof "Superior Court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 15–707.

§ 16–520. Defending against the attachment; trial of issue

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–522, 16–529.

§ 16–524. Judgment generally; condemnation of attached property

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–529.

§ 16–525. Condemnation and sale of property; proceeds of sale under interlocutory order

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–524, 16–527.

§§ 16–526, 16–527

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 16–524.

§ 16–533. Attachment proceedings in Superior Court

The provisions of this Code relating to attachments apply to attachment proceedings in the Superior Court of the District of Columbia. (Dec. 23, 1963, 77 Stat. 552, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(b)(3)(A), 84 Stat. 555.)

AMENDMENT

1970—Section 145(b)(3)(A) of Act July 29, 1970, Pub. L. 91–358 amended section: (i) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia", and (ii) by striking out "Court of General Sessions" in the section heading and inserting in lieu thereof "Superior Court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SUBCHAPTER II.—ATTACHMENT AND GARNISHMENT AFTER JUDGMENT IN AID OF EXECUTION

§ 16–546. Attachment of credits

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–548.

§ 16–549. Attachment of money or property in hands of executor or administrator

An attachment may be levied upon money or property of the defendant in the hands of an executor or administrator, and binds the same from the time of service. If the executor or administrator makes return to the writ that he can not certainly answer whether the defendant's share of the money or property in his hands will prove sufficient to pay the plaintiff's debt, a judgment of condemnation may not be rendered as against the executor or administrator until the passage by the Superior Court of his final or other account showing money or property in his hands to which the defendant is entitled. (Dec. 23, 1963, 77 Stat. 553, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(b)(2), 84 Stat. 555.)

AMENDMENT

1970—Section 145(b)(2) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "Probate Court" and inserting in lieu thereof "Superior Court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note 15–707.

§ 16–551. Defending against the attachment; trial of issues

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–553.

§ 16–552. Interrogatories to garnishee; oral examination

NOTES TO DECISIONS

Judgment of recovery against garnishee

In this case where garnishee appeared and opposed, the motion on jurisdictional grounds, the judgment creditor's motion for judgment of recovery, though garnishee had previously failed to answer the interrogatories, and where the garnishee alleged that nothing was owed to judgment debtor when writs were received and that judgment debtor thereafter left his job with the garnishee, judgment of recovery should not be entered if, on further proceedings, it is shown that no additional wages became due judgment debtor from garnishee between receipt of writs and termination of debtor's employment and if there were otherwise cause to permit answer to be filed. *Metropolitan Roofing and Sheet Metal Co., Inc.* v. *Franklin Investment Co., Inc.* (D.C. App. 1969, 256 A. 2d 913).

§ 16–556. Judgment against garnishee

NOTES TO DECISIONS

Judgment of recovery against garnishee

In this case where garnishee appeared and opposed, the motion on jurisdictional grounds, the judgment creditor's motion for judgment of recovery, though garnishee had previously failed to answer the interrogatories and where the garnishee alleged that nothing was owed to judgment debtor when writs were received and that judgment debtor thereafter left his job with the garnishee, judgment of recovery should not be entered if, on further proceedings, it is shown that no additional wages became due judgment debtor from garnishee between receipt of writs and termination of debtor's employment and if there were otherwise cause to permit answer to be filed. *Metropolitan Roofing and Sheet Metal Co., Inc.* v. *Franklin Investment Co., Inc.* (D.C. App. 1969, 256 A. 2d 913).

SUBCHAPTER III.—ATTACHMENT AND GARNISHMENT OF WAGES, ETC.

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 15–503.

§ 16–571. Definition

CROSS REFERENCE

Exemption from attachment of wages of nonresident in certain cases, see § 15–503(c).

Exemption from attachment of wages under prisoners' work release program, see § 24–466.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 15–503, 16–512, 16–582.

§ 16–572. Attachment of wages; percentage limitations; priority of attachments

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–577.

§ 16–573. Employer's duty to withhold and make payments; percentage

NOTES TO DECISIONS

Judgment of recovery against garnishee

In this case where garnishee appeared and opposed, the motion on jurisdictional grounds, the judgment creditor's motion for judgment of recovery, though garnishee had previously failed to answer the interrogatories and where the garnishee alleged that nothing was owed to judgment debtor when writs were received and that judgment debtor thereafter left his job with the garnishee, judgment of recovery should not be entered if, on further proceedings, it is shown that no additional wages became due judgment debtor from garnishee between receipt of writs and termination of debtor's employment and if there were otherwise cause to permit answer to be filed. *Metropolitan Roofing and Sheet Metal Co., Inc.* v. *Franklin Investment Co., Inc.* (D.C. App. 1969, 256 A. 2d 913).

§ 16–578. Superior Court judgments; lapse; validity

An attachment issued by the Superior Court of the District of Columbia upon a judgment of that court duly filed and recorded, and levied within twelve years from the date of the judgment upon the wages due or to become due to the judgment debtor from the employer-garnishee, shall not lapse or become invalid prior to complete satisfaction solely by reason of the expiration of the period of limitation set forth in section 15–101. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(b)(3)(A), (b)(4), 84 Stat. 555.)

AMENDMENTS

1970—Section 145(b)(3)(A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia" and by striking out "Court of General Sessions" in the section heading and inserting in lieu thereof "Superior Court".

Section 145(b)(4) further amended section (A) by striking out "docketed in the United States District Court for the District of Columbia" and inserting in lieu thereof "filed and recorded", (B) by striking out "six years" and inserting in lieu thereof "twelve years", and (C) by striking out "section 15–132(a)" and inserting in lieu thereof "section 15–101".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

§ 16–581. Rules of procedure

The judges of the Superior Court of the District of Columbia and of the United States District Court for the District of Columbia shall establish such rules of procedure for their respective courts as may be necessary to effectuate the purposes of this subchapter. (Dec. 23, 1963, 77 Stat. 557, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(b)(5), 84 Stat. 555.)

AMENDMENT

1970—Section 145(b)(5) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 6.—BONDS AND UNDERTAKINGS

§ 16–601. Undertaking in lieu of fiduciary's bond

A bond required from an executor, administrator, administrator cum testamento annexo, administrator de bonis non, guardian, committee, collector, trustee, receiver, assignee for the benefit of creditors, or other fiduciary appointed or confirmed by the United States District Court for the District of Columbia or the Superior Court of the District of Columbia, or a bond required from a party to a cause or proceeding pending in that court, shall be in the form of an undertaking, under seal, in a maximum amount to be fixed by the court, conditioned as required by law, the surety or sureties therein submitting themselves to the jurisdiction of the court and undertaking for themselves and each

of them, their and each of their heirs, executors, administrators, successors, and assigns to abide by and perform the judgment or decree of the court in the premises; and further agreeing that, upon default by the principal in any of the conditions thereof, the damages may be ascertained in such manner as the court directs and the court may give judgment thereon in favor of any person thereby aggrieved against the principal and sureties for the damages sustained by him, and that judgment may be rendered against all or any of the parties whose names are thereto signed.

The United States District Court for the District of Columbia (as specified in section 11–501) and the Superior Court of the District of Columbia (as specified in section 11–921) have jurisdiction to enter such judgments and decrees against the principal and surety or sureties, or any of them, upon the undertaking, as law and justice require. This section does not deprive a party having a claim or cause of action under or upon the undertaking from electing to pursue his ordinary remedy by civil suit.

The provisions of this Code relating to actions, remedies and proceedings upon bonds of fiduciaries apply to such undertakings to the same extent as if undertaking had been expressly mentioned and referred to therein. (As added Aug. 30, 78 Stat. 678, Pub. L. 88–509, § 3(c)(1); July 29, 1970, Pub. L. 91–358, title I, § 145(c), 84 Stat. 555.)

AMENDMENT

1970—Section 145(c) of Act July 29, 1970, Public Law 91–358 amended section by striking out (1) ", or a judge thereof," in the first sentence of the first paragraph and inserting in lieu thereof "or the Superior Court of the District of Columbia,", and

(2) by striking out "has" in the first sentence of the second paragraph and inserting in lieu thereof the following: "(as specified in section 11–501) and the Superior Court of the District of Columbia (as specified in section 11–921) have".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 7.—CRIMINAL PROCEEDINGS IN THE SUPERIOR COURT

Sec.
16–702. Prosecution by indictment or information

AMENDMENTS

1970—Section 145(d)(7) of Act July 29, 1970, Public Law 91–358 amended chapter 7 heading by striking out "COURT OF GENERAL SESSIONS" and inserting in lieu "SUPERIOR COURT".

Section 145(d)(2)(B) of Act July 29, 1970, Public Law 91–358 amended section analysis as to item 16–702 to read as above set out.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–701. Rules and regulations

The Superior Court may make such rules and regulations for conducting business in the Criminal Division of the court, consistent with statutes applicable to such business and in the manner provided in section 11–946, as it may deem necessary and proper. (Dec. 23, 1963, 77 Stat 557, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, § 145(d)(1), title I, 84 Stat. 555.)

AMENDMENT

1970—Section 145(d)(1) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–702. Prosecution by indictment or information

An offense prosecuted in the Superior Court which may be punished by death shall be prosecuted by indictment returned by a grand jury. An offense which may be punished by imprisonment for a term exceeding one year shall be prosecuted by indictment, but it may be prosecuted by information if the defendant, after he has been advised of the nature of the charge and of his rights, waives in open court prosecution by indictment. Any other offense may be prosecuted by indictment or by information. An information subscribed by the proper prosecuting officer may be filed without leave of court. (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88–241, § 1, eff. Jan 1, 1964; July 29, 1970, Pub. L. 91–358, § 145(d)(2)(A), title I, 84 Stat. 555.)

AMENDMENT

1970—Section 145(d)(2)(A) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–703. Process of Criminal Division; fees

(a) The Criminal Division of the Superior Court may issue process for the arrest of a person against whom an indictment is returned, an information is filed, or a complaint under oath is made.

(b) Process shall—

(1) be under the seal of the court;

(2) bear teste in the name of a judge of the court, and

(3) be signed by a clerk or employee of the court authorized to administer oaths.

(c) In cases arising out of violations of any of the ordinances of the District of Columbia, process shall be directed to the Chief of Police, who shall execute the process and make return thereof in like manner as in other cases.

(d) In all other criminal cases, the process issued by the Superior Court may be directed to the United States marshal or to the Chief of Police.

(e) For services pursuant to subsection (d) of this section the marshal shall receive the fees prescribed by section 15–709(b)(2). (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, § 145(d)(3), title I, 84 Stat. 556.)

AMENDMENT

1970—Section 145(d)(3) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–704. Bail; collateral security

(a) A person charged with an offense triable in the criminal division of the Superior Court of the

District of Columbia may give security for his appearance for trial or for further hearing, either by giving bond to the satisfaction of the court or by depositing money as collateral security with the appropriate officer at the court or the station keeper of the police precinct within which he is apprehended. When a sum of money is deposited as collateral security as provided by this section it shall remain, in contemplation of law, the property of the person depositing it until duly forfeited by the court. When forfeited, it shall be, in contemplation of law, the property of the United States of America or of the District of Columbia, according as the charge against the person depositing it is instituted on behalf of the United States or of the District. Every person receiving any sum of money deposited as provided by this section shall be deemed in law the agent of the person depositing it or of the United States or the District, as the case may be, for all purposes of properly preserving and accounting for money.

(b) This section does not affect the ultimate rights under existing law of the Washington Humane Society of the District of Columbia, in or to any forfeitures collected in the criminal division of the Superior Court of the District of Columbia. (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub L. 91–358, title I, § 145(d)(6), 84 Stat. 557.)

AMENDMENT

1970—Section 145(d)(6) of Act July 29, 1970, Public Law 91–358 amended section by striking out "Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CROSS REFERENCE

For release on bond before trial, see § 23–1301 to § 23–1332.

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 11–748a) is referred to in section 16–708.

§ 16–705. Jury trial; trial by court

(a) In a criminal case tried in the Superior Court in which, according to the Constitution of the United States, the defendant is entitled to a jury trial, the trial shall be by jury, unless the defendant in open court expressly waives trial by jury and requests trial by the court, and the court and the prosecuting officer consent thereto. In the case of a trial without a jury, the trial shall be by a single judge, whose verdict shall have the same force and effect as that of a jury.

(b) In any case where the defendant is not under the Constitution of the United States entitled to a trial by jury, the trial shall be by a single judge without a jury, except that if—

(1) the case involves an offense which is punishable by a fine or penalty of more than $300 or by imprisonment for more than ninety days (or for more than six months in the case of the offense of contempt of court), and

(2) the defendant demands a trial by jury and does not subsequently waive a trial by jury in accordance with subsection (a), the trial shall be by jury.

(c) The jury shall consist of twelve persons, unless the parties, with the approval of the court and in the manner provided by rules of the court, agree to a number less than twelve. (Dec. 23, 1963, 77 Stat. 558, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, § 145(d)(4), title I, 84 Stat. 556.)

AMENDMENT

1970—Section 145(d)(4) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS

Construction

This section, providing that a jury shall consist of 12 persons unless parties with approval of court and by stipulating in writing agree to a number less than 12, is inapplicable to situation where juror was stricken during trial on defendant's motion. *E. Y. Graham* v. *United States* (D.C. App. 1970, 267 A. 2d 358).

Right to jury trial

Length of a possible sentence is highly relevant to question whether a case should or should not be tried by a judge without a jury, and it is unfair for court which has denied a jury trial in the light of one maximum punishment to impose a sentence in the light of another. *M. Schnurman* v. *United States* (1967, 379 F. 2d 92, 126 U.S. App. D.C. 315).

Right to jury trial in sodomy case

If an offense is of a nature indictable at common law and thus tried by jury, that offense is triable by jury under the Constitution. *H. Gaithor* v. *United States* (D.C. App. 1969, 251 A. 2d 644).

Trial by jury is a right which must be afforded as to criminal offenses providing penalty so severe that it gives such offenses character of a common-law crime or of a major offense. *Id.*

A defendant, who is charged with solicitation for immoral and lewd purpose of committing oral sodomy, is not entitled to jury trial in view of fact such offense was not indictable at common law and that penalty imposed was not more than $250 or imprisonment for not more than 90 days or both. *Id.*

Waiver of jury trial

Where the government conceded that the defendant demanded trial by jury and record of what occurred in open court was silent to any waiver, case would be remanded for hearing to determine whether defendant knowingly and voluntarily waived his right to jury trial and requested trial by the court. *L. E. Towler* v. *United States* (D.C. App. 1970, 271 A. 2d 553).

In this prosecution for false pretenses, where defendant had a right to trial by jury, but neither defendant nor his counsel objected to proceeding to trial without jury, and there was discussion in open court at prior hearing in case concerning a jury trial for defendant and official court entry on information stated "Jury Trial Demand Withdrawn," absence from transcript of any express waiver of defendant's right to jury trial was cured. *C. Banks* v. *United States* (D.C. App. 1970, 262 A. 2d 110).

The court held that, in criminal prosecutions, where trial is had without jury, trial court is responsible for seeing to it by inquiry of defendant himself that he understands and knowingly and voluntarily waives his right to trial by jury and trial judge must also assure that such waiver is contained in the record as it occurred rather than merely as a rubber stamp entry on back of information. *Id.*

In a prosecution, without jury, where there is a right to trial by jury, and for the record of what occurred in open court was silent as to waiver of defendant's right to a jury trial, case would be remanded for a determination, after hearing, of whether defendant knowingly and voluntarily waived his right to jury trial in open court

and requested a trial by the court, even though informations had been stamped with notation "Jury Trial Demand Withdrawn". *F. H. Jackson* v. *United States* (D.C. App. 1970, 262 A. 2d 106).

The court said that the public interest in obtaining swift and certain justice for those charged with crime, requires that trial court assume responsibility for making certain that record in all criminal trials in which accused has a constitutional right to trial by jury, which are conducted without a jury, contains evidence from which it may be found that defendant knowingly and voluntarily waived such right. *Id.*

The court held that in trials commenced after issuance of this opinion, there should be in the record a statement in open court by defendant himself in order to provide a basis for subsequently determining, if necessary, that he knowingly and voluntarily waived his constitutional right to trial by jury. *Id.*

A waiver of jury trial need not be made and announced by defendant personally but may be done effectually through counsel. *R. L. Thompkins* v. *United States* (D.C. App. 1969, 251 A. 2d 636).

It was not error to accept defendant's waiver of his right to jury trial on ground that court did not determine whether waiver was made intelligently and understandingly, where an announcement by counsel was made in defendant's presence of decision to waive and defendant was then advised of his right to jury trial and defendant expressed approval in open court of his counsel's announcement. *Id.*

§ 16–706. Enforcement of judgments; commitment upon non-payment of fine

The Superior Court may enforce any of its judgments rendered in criminal cases by fine or imprisonment, or both. Except as otherwise provided by law, and subject to the relief provided in section 3569 of title 18, United States Code, in any case where the court imposes a fine, the court may, in the event of default in the payment of the fine imposed, commit the defendant for a term not to exceed one year. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, § 145(d)(5), title I, 84 Stat. 556.)

AMENDMENT

1970—Section 145(d)(5) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS

Appeal and error

Record in prosecution for carrying a pistol without a license in violation of § 22–3204 supported finding that defendant, to whom Miranda warnings were read by policeman from standard police form and who was given the form to read in police station before being questioned, but who was not asked if he understood contents of form, had been sufficiently informed of his right to remain silent and to counsel. *M. J. Brewster* v. *United States* (D.C. App. 1970, 271 A. 2d 409).

In view of the overwhelming evidence that the particular address claimed by defendant to be his dwelling house was not his dwelling house, any error with respect to whether defendant waived any of his constitutional rights to remain silent and to counsel before being questioned as to his residence was harmless in prosecution for violation of § 22–3204 prohibiting the carrying of an unlicensed pistol except in one's dwelling house. *Id.*

§ 16–707. Disposition of fines

(a) All fines payable and paid under judgment of the criminal division of the Superior Court of the District of Columbia shall, upon their payment, immediately become, in contemplation of law, the property of the United States or the District of Columbia, according to the charge upon which the fine may be adjudged. Every person receiving such a fine shall be deemed in law an agent of the United States or the District, as the case may be.

(b) This section does not affect the ultimate rights under existing law of the Washington Humane Society of the District of Columbia, in or to any fines paid in the criminal division of the Superior Court of the District of Columbia. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(d)(6), 84 Stat. 557.)

AMENDMENT

1970—Section 145(d)(6) of Act July 29, 1970, Public Law 91–358 amended section by striking out "Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 11–748a) is referred to in section 16–708.

§ 16–709. Executions on forfeited recognizances and judgments

The Superior Court of the District of Columbia may issue execution on all recognizances forfeited in its criminal division, upon motion of the prosecuting officer; and all writs of fieri facias or other writs of execution on judgments issued by the criminal division shall be directed to and executed by the United States marshal. (Dec. 23, 1963, 77 Stat. 559, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(d)(6), 84 Stat. 557.)

AMENDMENT

1970—Section 145(d)(6) of Act July 29, 1970, Public Law 91–358 amended section by striking out "Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–710. Suspension of imposition or execution of sentence

In criminal cases in the Superior Court of the District of Columbia, the court may, upon conviction, suspend the imposition of sentence or impose sentence and suspend the execution thereof, for such time and upon such terms as it deems best, if it appears to the satisfaction of the court that the ends of justice and the best interests of the public and of the defendant would be served thereby. In each case of the imposition of sentence and the suspension of the execution thereof, the court may place the defendant on probation under the control and supervision of a probation officer. The probationer shall be provided by the clerk of the court with a written statement of the terms and conditions of his probation at the time when he is placed thereon. He shall observe the rules prescribed for his conduct by the court and report to the probation officer as directed. A person may not be put on probation without his consent. (Dec. 23, 1963, 77

Stat. 559, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(d)(6), 84 Stat. 557.)

AMENDMENT

1970—Section 145(d)(6) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS

Conditions of probation

Probation which was conditioned on male defendant staying away from particular woman was proper to minimize chance of recurrence of crime committed and was within the scope of authority of trial judge. *C. Willis* v. *United States* (D.C. App. 1969, 250 A. 2d 569).

Probation conditions may be prescribed by court to minimize chance of recurrence of crime committed. *Id.*

Condition of suspension of sentence

Fact that condition imposed in suspending imposition of sentence or execution of sentence may restrict defendants' constitutional rights is not improper, but condition imposed must not be immoral, illegal or impossible of performance. *V. W. Huffman and D. E. Pryba* v. *United States* (D.C. App. 1969, 259 A. 2d 342).

A condition of suspension of sentence, imposed upon conviction of selling certain obscene magazines, that defendants, in advance, consent to search by police of any premises operated or managed (not owned) by them in the future was illegal, since employee of business concern, whether manager or otherwise, lacks power to give general authorization to police to search his employer's premises and it would be illegal for him to attempt to give such authority. *Id.*

Chapter 9.—DIVORCE, ANNULMENT, SEPARATION, SUPPORT, ETC.

Sec.

16–916. Maintenance of wife and minor children; maintenance of former wife; maintenance of minor children; enforcement.
16–918. Appointment of counsel; compensation.

AMENDMENT

1970—Section 145(e)(2)(B), (e)(3)(B) of act July 29, 1970, Pub. L. 91–358, amended items 16–916 and 16–918 to read as above set out.

§ 16–901. Definition

As used in this chapter, "court" means the Superior Court of the District of Columbia. (Dec. 23, 1963, 77 Stat. 560, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(e)(1), 84 Stat. 557.)

AMENDMENT

1970—Section 145(e)(1) of Act July 29, 1970, Public Law 91–358 amended section by striking out "Domestic Relations Branch of Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–902. Residence requirements

NOTES TO DECISIONS

Bona fide resident

Evidence which showed that British citizen had severed all ties with Great Britain other than maintining British citizenship, had renewed his visa several times previous to institution of divorce action, was employed and lived within District of Columbia and intended to remain there indefinitely, British citizen was a bona fide resident of the District of Columbia for purposes of divorce action even though he had not applied for permanent residence in the United States and had entered United States on a nonimmigrant visa. *D. L. Alves* v. *J. Alves* (D.C. App. 1970, 262 A. 2d 111).

§ 16–904. Grounds for divorce, legal separation and annulment

NOTES TO DECISIONS

Abuse of discretion

It is an abuse of discretion for trial courts to use criteria in passing on in forma pauperis applications that in effect set up more restrictive divorce grounds than are prescribed by statute. *H. Harris* v. *G. H. Harris* (1970, 424 F. 2d 806, 137 U.S. App. D.C. 318).

Burden of proof

In a case where the wife admitted that separation from husband had become voluntary had, as the party challenging the continuity of the voluntariness, the burden of proving that she had changed her mind in husband's action for annulment or divorce. *H. E. Smith* v. *L. C. Smith* (D.C. App. 1969, 256 A. 2d 833).

Construction

The obvious intent of in pauperis statute is to make available to indigent, in common with his fellow citizen, full range of civil remedies contrived by court or legislature, including what appeared to be meritorious cases for divorce. *H. Harris* v. *G. H. Harris* (1970, 424 F. 2d 806, 137 U.S. App. D.C. 318).

In forma pauperis statute (section 15–712) should be construed to permit indigents to proceed in good faith with nonfrivolous claims for divorce. *Id.*

Since Congress has prescribed certain statutory grounds for divorce in the District of Columbia, it is beyond authority of any court to impose additional ground thereto. *Id.*

In view of in forma pauperis statute (section 15–712), it is not proper to use inability of divorce applicant to pay costs of divorce action as ground for denying applicant access to fair trial. *Id.*

One of the objectives in enacting in forma pauperis statute (section 15–712) is to give rich and poor alike equal right to divorce. *Id.*

In the forma pauperis statute (section 15–712) does not exclude divorce actions. *Id.*

Evidence—admissibility

A wife who stated that she was not agreeable to reconciliation with her husband on form entitled "Motion and Affidavit" which she filed in an action for separate maintenance was judicial admission and should have been admitted into evidence in husband's action for annulment or divorce to show that separation was voluntary. *H. E. Smith* v. *L. C. Smith* (D.C. App. 1969, 256 A. 2d 833).

—— Sufficiency

In this case, the court held that the evidence in divorce action by wife supported finding that husband had not been separated from wife for one year. *J. W. Robinson* v. *M. L. Johnson a/k/a M. Robinson* (D.C. App. 1970, 264 A. 2d 305).

In this case, the court held that there was substantial evidence to support the trial court's finding in husband's divorce action that husband intended to and did take up residence in the District of Columbia, *D. Seabrook v. B. L. Seabrook* (D.C. App. 1970, A. 2d 311).

Evidence was sufficient to sustain court's finding that the separation was voluntary and entitled husband to a divorce. *G. McDaniel* v. *J. McDaniel, Jr.* (D.C. App. 1969, 254 A. 2d 407).

Indigency

In this case, the court held that the wife, who brought suit for divorce, was indigent, so as to be entitled to proceed under in forma pauperis statute (section 15–712), since she was mother of five children, and her total income was $220 per month, recently increased to $229 per month, from Department of Public Welfare. *H. Harris* v. *G. H. Harris* (1970 424 F. 2d 806, 137 U.S. App. D.C. 318).

A wife, who brought divorce suit, was indigent, so that she could proceed under in forma pauperis statute (section 15–712), since her take-home pay was $70 per week,

or about $300 per month, and her living expenses were $299, counting $51 per month which she had to pay on debts totaling $620. *Id.*

Jurisdiction

Since the plaintiff husband met residency requirements to obtain divorce in District of Columbia and the defendant wife submitted to jurisdiction of District of Columbia trial court, trial court was entitled to entertain and determine the divorce action. *D. Seabrook* v. *B. L. Seabrook* (D.C. App. 1970, 264 A. 2d 311).

Proof

Nonindigent applicants for divorce are not required to prove in their divorce action in addition to statutory grounds that some useful social reason will be served by severance of marital relationship, and such a ground cannot be imposed on indigent applicants as an additional requirement. *H. Harris* v. *G. H. Harris* (1970, 424 F. 2d 806, 137 U.S. App. D.C. 318).

Public policy

The public policy of the District of Columbia is not against divorce in divorce applications by indigent plaintiffs, *H. Harris* v. *G. H. Harris* (1970, 424 F. 2d 806, 137 U.S. App. D.C. 318).

The public policy as to whether indigents should be able to maintain suit for divorce under in forma pauperis statute (section 15–712) is for Congress and not judicial branch of government. *Id.*

Voluntary separation

In this case, since the wife did not in good faith manifest real desire to continue marriage status and never made any effort to get in touch with her husband after separation, the separation was "voluntary" within this section making voluntary separation of the parties for one year a ground for divorce. *D. Seabrook* v. *B. L. Seabrook* (D.C. App. 1970, 264 A. 2d 311).

A spouse who entertains serious intention to resume a marriage must communicate that intention to the other spouse, even at the risk of his or her refusal. *Id.*

A wife seeking to show that she wanted her marriage to continue and thus avoid divorce sought on ground of voluntary separation of the parties for one year cannot excuse her lack of action in attempting to reconcile on belief, on basis of rumors, that meretricious relationship existed between her husband and another woman. *Id.*

Separation which initially constituted desertion by the husband became voluntary on the part of wife who filed a motion for separate maintenance in which she stated in pleadings that she was not agreeable to reconciliation and the husband who filed an action for annulment or divorce more than one year after wife filed separate maintenance action should have been granted a divorce when wife failed to show that separation had ceased to be voluntary. *H. E. Smith* v. *L. C. Smith* (D.C. App. 1969, 256 A. 2d 833).

§ 16–907. Legitimacy of issue of annulled marriage contracted while another in force

NOTES TO DECISIONS

Knowledge of mental condition

Woman who knew of man's commitment to mental institution at time of marriage was not entitled to annulment and the annulment should have been granted to the man. *A. D. Martin* v. *L. P. Martin* (D.C. App. 1968, 240 A. 2d 363).

§ 16–910. Dissolution of property rights; jurisdiction of court

NOTES TO DECISIONS

Apportionment of jointly held property

Under this section it is clear that the court has authority to award or to apportion between the parties, locally owned realty, in such manner as was found to be equitable, just and reasonable. *E. B. Argent* v. *S. E. Argent* (D.C. App. 1967, 233 A. 2d 142; rev'd and remanded 396 F. 2d 695).

Apportionment of property located outside of district

This section does not give the court authority over jointly held property in Maryland. *E. B. Argent* v. *S. E. Argent* (D.C. App. 1967, 233 A. 2d 142; rev'd and remanded 396 F. 2d 695).

Construction

Difference between terms "award and apportion" as used in District of Columbia statute relating to court's authority to apportion property in divorce action and terms "determine and adjudicate" as used in statute relating to general jurisdictional grant to Domestic Relations Branch is simply difference between directly and indirectly affecting title to land. *E. B. Argent* v. *S. E. Argent* (1968, 396 F. 2d 695, 130 U.S. App. D.C. 46).

Effect of local divorce decree on title to property in Maryland

When divorce decree was entered here, the parties no longer held Maryland real estate as tenants by the entirety, but instead as tenants in common, by virtue of Maryland law. *E. B. Argent* v. *S. E. Argent* (D.C. App. 1967, 233 A. 2d 142; rev'd and remanded 396 F. 2d 695).

Jurisdiction

District of Columbia statute providing that on entry of decree of divorce all property rights of parties in joint tenancy or by entirety shall stand dissolved and court shall apportion property in equitable manner gave trial court no authority over jointly held property located in Maryland. *E. B. Argent* v. *S. E. Argent* (1968, 396 F. 2d 695, 130 U.S. App. D.C. 46).

Jurisdiction over foreign property

In a divorce action, District of Columbia court could not award and apportion property located in Maryland but it did have jurisdiction to determine and adjudicate rights of parties before it to such property and direct parties to execute such instruments as were necessary to effectuate that adjudication. *E. B. Argent* v. *S. E. Argent* (1968, 396 F. 2d 695, 130 U.S. App. D.C. 46).

District of Columbia courts are authorized to adjust and apportion property rights in property held jointly by parties to divorce action and must do so in same proceeding in which divorce decree is entered although their enforcement power as to property located in another state is limited to determination and adjudication of parties' rights. *Id.*

Property rights

Since husband and wife entered into separation agreement stating that it was contemplated that wife would continue to reside in marital home with children; and until otherwise determined by parties the ownership and record title of property would remain unchanged, trial court which entered divorce decree acted properly in refusing to consider rights of parties with respect to home which was situated in Maryland. *D. L. Alves* v. *J. Alves* (D.C. App. 1970, 262 A. 2d 111).

§ 16–911. Alimony pendente lite; suit money; enforcement; custody of children

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–912, 16–916.

§ 16–913. Alimony when divorce is granted on husband's application

NOTES TO DECISIONS

Abuse of discretion

An award of alimony under section 16–913 when divorce is granted upon husband's application will not be disturbed, unless an abuse of discretion is made manifest by the record. *M. L. Majette* v. *M. Majette* (D.C. App. 1970, 261 A. 2d 824).

An award of $35 per week for the support and maintenance of wife who was in poor health, incapable of working, had no source of income or other property and who had been married to husband for 26 years, and of two minor children of marriage by husband with salary of approximately $13,400 per year and who admitted by his pleadings and testimony that the wife needed at least $250 per month to support herself and two children did not constitute and exercise of sound discretion. *Id.*

Amount of alimony

This section did not compel court to award, as alimony, amount which husband agreed to pay wife in separation agreement. *D. L. Alves* v. *J. Alves* (D.C. App. 1970, 262 A. 2d 111).

§ 16–914. Retention of jurisdiction as to alimony and custody of children

NOTES TO DECISIONS

Jurisdiction

In divorce action, this section did not require trial court to make order of custody of parties' children even though trial court did have jurisdiction to enter such an order *D. L. Aves* v. *J. Alves* (D.C. App. 1970, 262 A. 2d 111).

The court in a proceeding for divorce has continuing jurisdiction over the issues of custody and child support even if divorce decree is silent as to custody or child support. *Id.*

§ 16–916. Maintenance of wife and minor children; maintenance of former wife; maintenance of minor children; enforcement

(a) Whenever any husband shall fail or refuse to maintain his wife, minor children, or both, although able to do so, or whenever any father shall fail or refuse to maintain his children by a marriage since dissolved, although able to do so, the court, upon proper application, may decree, pendente lite and permanently, that he shall pay reasonable sums periodically for the support of such wife and children, or such children, as the case may be, and the court may decree that he pay suit money, including counsel fees, pendente lite and permanently, to enable plaintiff to conduct the case.

(b) Whenever a former huband has obtained a foreign ex parte divorce, the court thereafter, on application of the former wife and with personal service of process upon the former husband in the District of Columbia, may decree that he shall pay her reasonable sums periodically for her maintenance and for suit money, including counsel fees, pendente lite and permanently, to enable plaintiff to conduct the case.

(c) Whenever any father or mother shall fail to maintain his or her minor child or children, the court may decree that he or she shall pay reasonable sums periodically for the support and maintenance of his or her child or children, and the court may decree that the father or mother pay court costs, including counsel fees, to enable plaintiff to conduct the cases.

(d) The court may enforce any decree entered under this section in the same manner as is provided in section 16–911. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Sept. 29, 1965, 79 Stat. 889, Pub. L. 89–217, § 3; July 29, 1970, Pub. L. 91–358, title I, § 145(e)(2)(A), 84 Stat. 557.)

AMENDMENT

1970—Section 145(e)(2)(A) of Act July 29, 1970, Public Law 91–358 amended section

(i) by redesignating subsection (c) as subsection (d) and by adding after subsection (b) a new subsection (c) to read as above set out, and

(ii) by amending the section heading to read as above set out.

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

NOTES TO DECISIONS

Abuse of discretion

The award of counsel fees to wife, in her suit for separate maintenance and support, was not a clear abuse of discretion, notwithstanding that wife had left her husband and marital abode without just cause, which was bar to her claim for separate maintenance and support. *E. T. Lee* v. *N. E. Lee* (D.C. App. 1970, 267 A. 2d 824).

Attorney fees

In a case where divorced wife had to sue to compel husband to pay child support due, an award of attorney fee was proper under this section giving court such power when father fails or refuses to maintain his children, notwithstanding that husband may have based refusal on goodfaith misinterpretation of separation agreement. *W. N. McGehee, Jr.* v. *F. T. Maxfield* (D.C. App. 1969, 256 A. 2d 576).

Default judgment

In case in which defendant putative father failed to plead or otherwise defend, although properly served with process, in action by mother for support and maintenance of minor child, mother, upon filing of affidavit in support, was entitled to entry of default, and ex parte proof of defendant's paternity was not required. *E. V. Taylor* v. *B. A. Johnson, Jr.* (D.C. App. 1970, 262 A. 2d 803).

Judgment of specific performance of support agreement

Trial court could not commit husband for his contemptuous failure to comply with order for specific performance of agreement to pay wife $200 monthly for her support though husband was able to make such payments but deliberately refused to carry out his agreement and money judgments against him could not be collected by ordinary process. *C. M. O'Mara* v. *R. M. O'Mara* (D.C. App. 1968, 238 A. 2d 586).

Mortgage payments as maintenance

Mortgage payments which the court ordered husband to make on the marital abode in which wife still lives may constitute maintenance for the wife and the husband may be imprisoned for failure to make such payments. *H. E. Smith* v. *L. C. Smith* (D.C. App. 1969, 256 A. 2d 833).

Separate maintenance

In this case the court held that when the wife left her husband and marital abode without just cause, such desertion bars her claim for separate maintenance and support. *E. T. Lee* v. *N. E. Lee* (D.C. App. 1970, 267 A. 2d 824).

§ 16–918. Appointment of counsel; compensation

(a) In all uncontested divorce cases, and in any other divorce or annulment case where the court deems it necessary or proper, a disinterested attorney shall be appointed by the court to enter his appearance for the defendant and actively defend the cause.

(b) In any proceeding wherein the custody of a child is in question, the court may appoint a disinterested attorney to appear on behalf of the child and represent his best interests.

(c) An attorney appointed under this section may receive such compensation for his services as the court determines to be proper, which the court may direct to be paid by the parties. (Dec. 23, 1963, 77 Stat. 562, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, § 145(e)(3)(A), title I, 84 Stat. 557.)

AMENDMENT

1970—Section 145(e)(3)(A) of Act July 29, 1970, Public Law 91–358, amended section including the heading to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–2304.

NOTES TO DECISIONS

Indigents

Indigents bringing divorce suits in forma pauperis are not required to pay the $100 minimum attorneys' fees. *H. Harris* v. *G. H. Harris* (1970, 424 F. 2d 806, 137 U.S. App. D.C. 318).

Chapter 10.—PROCEEDINGS REGARDING INTRAFAMILY OFFENSES

Sec.
16–1001. Definitions.
16–1002. Complaint of criminal conduct; referrals to Family Division.
16–1003. Petition for civil protection.
16–1004. Petition; notice; temporary order.
16–1005. Hearing; evidence; protection order.
16–1006. Dismissal of petition; notice.

AMENDMENT

1970—This chapter was added by section 131(a) of Pub. L. 91–358.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 11–1101.

§ 16–1001. Definitions

For purposes of this chapter:

(1) The term "intrafamily offense" means an act, punishable as a criminal offense, committed—

(A) by one spouse against the other;

(B) by a parent, guardian, or other legal custodian against a child; or

(C) by one person against another person with whom he shares a mutual residence and is in a close relationship rendering the application of this chapter appropriate.

(2) The terms "complainant" and "family member" include any individual in the relationship described in paragraph (1).

(3) The term "Family Division" means the Family Division of the Superior Court of the District of Columbia.

(4) The term "Director of Social Services" means the Director of Social Services in the Superior Court of the District of Columbia. (Added, July 29, 1970, Pub. L. 91–358, § 131(a), title I, 84 Stat. 546.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–1002. Complaint of criminal conduct; referrals to Family Division

(a) If, upon the complaint of any person of criminal conduct by another or the arrest of a person charged with criminal conduct, it appears to the United States Attorney for the District of Columbia (hereafter in this chapter referred to as the "United States attorney") that the conduct involves an intrafamily offense, he shall notify the Director of Social Services. The Director of Social Services may investigate the matter and make such recommendations to the United States attorney as the Director deems appropriate.

(b) The United States attorney may also (1) file a criminal charge based upon the conduct and may consult with the Director of Social Services concerning appropriate recommendations for conditions of release taking into account the intrafamily nature of the offense; or (2) refer the matter to the Corporation Counsel for the filing of a petition for civil protection in the Family Division. Prior to any such referral, the United States attorney shall consult with the Director of Social Services concerning the appropriateness of the referral. A referral to the Corporation Counsel by the United States attorney shall not preclude the United States attorney from subsequently filing a criminal charge based upon the conduct, if he deems it appropriate, but no criminal charge may be filed after the Family Division begins receiving evidence pursuant to section 16–1005. (Added, July 29, 1970, Pub. L. 91–358, § 131(a), title I, 84 Stat. 546.)

§ 16–1003. Petition for civil protection

(a) Upon referral by the United States attorney, or upon application of any person or agency for a civil protection order with respect to an intrafamily offense committed or threatened, the Corporation Counsel may file a petition for civil protection in the Family Division.

(b) In any matter referred to the Corporation Counsel by the United States attorney in which the Corporation Counsel does not file a petition, he shall so notify the United States attorney. (Added, July 29, 1970, Pub. L. 91–358, § 131(a), title I, 84 Stat. 546.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–1004. Petition; notice; temporary order

(a) Upon a filing of a petition for civil protection by the Corporation Counsel, the Family Division shall set the matter for hearing, consolidating it, where appropriate, with other matters before the Family Division involving members of the same family.

(b) The Family Division shall cause notice of the hearing to be served on the respondent, the complainant and, if appropriate, the family member endangered (or, if a child, the person then having physical custody of the child), the Director of Social Services, and the Corporation Counsel. The respondent shall be served with a copy of the petition together with the notice and shall be directed to appear at the hearing. The Family Division may also cause notice to be served on other members of the family whose presence at the hearing is necessary to the proper disposition of the matter.

(c) If, upon the filing of the petition, the Division finds that the safety or welfare of a family member is immediately endangered by the respondent, it may, ex parte, issue a temporary protection order of not more than ten days duration and direct that the order be served along with the notice required by this section. (Added, July 29, 1970, Pub. L. 91–358, § 131(a), title I, 84 Stat. 547.)

§ 16–1005. Hearing; evidence; protection order

(a) Members of the family receiving notice shall appear at the hearing. In addition to the parties, the Corporation Counsel and the Director of Social Services may present evidence at the hearing.

(b) Notwithstanding section 14–306, in a hearing under this section, one spouse shall be a competent and compellable witness against the other and may testify as to confidential communications, but testimony compelled over a claim of a privilege conferred by such section shall be inadmissible in evidence in a criminal trial over the objection of a spouse entitled to claim that privilege.

(c) If, after hearing, the Family Division finds that there is good cause to believe the respondent has committed or is threatening an intrafamily offense, it may issue a protection order—

(1) directing the respondent to refrain from the conduct committed or threatened and to keep the peace toward the family member;

(2) requiring the respondent, alone or in conjunction with any other member of the family before the court, to participate in psychiatric or medical treatment or appropriate counseling programs;

(3) directing, where appropriate, that the respondent avoid the presence of the family member endangered;

(4) directing the respondent to perform or refrain from other actions as may be appropriate to the effective resolution of the matter; or

(5) combining two or more of the directions or requirements prescribed by the preceding paragraphs.

(d) A protection order issued pursuant to this section shall be effective for such period up to one year as the Family Division may specify, but the Family Division may, upon motion of any party to the original proceeding, extend, rescind, or modify the order for good cause shown.

(e) Any final order issued pursuant to this section and any order granting or denying extension, modification, or rescission of such order shall be appealable.

(f) Violation of any temporary or permanent order issued under this chapter and failure to appear as provided in subsection (a) shall be punishable as contempt. (Added, July 29, 1970, Pub. L. 91–358, § 131(a), title I, 84 Stat. 547.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–1002, 16–1006.

§ 16–1006. Dismissal of petition; notice

(a) The Family Division may dismiss a petition if the matter is not appropriate for disposition in the Family Division.

(b) If a petition dismissed under subsection (a) was originated by referral from the United States attorney, and the dismissal was prior to the receipt of evidence pursuant to section 16–1005, the Family Division shall notify the United States attorney of the dismissal. (Added, July 29, 1970, Pub. L. 91–358, § 131(a), title I, 84 Stat. 548.)

Chapter 11.—EJECTMENT AND OTHER REAL PROPERTY ACTIONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 11–921.

SUBCHAPTER I.—EJECTMENT

§ 16–1109. Recovery of mesne profits and damages; separate count

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1118.

§ 16–1116. Improvements; notice; good faith; directions to jury; measure of damages

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–1109, 16–1117, 16–1118.

§ 16–1120. Election of plaintiff if value of improvements exceed damages

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1122.

SUBCHAPTER II.—PROCEEDINGS TO DISCOVER THE DEATH OF A TENANT FOR LIFE

§ 16–1151. Petition by person entitled to claim; form and contents

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1152.

§ 16–1152. Order to produce life tenant; service of order

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1153.

§ 16–1153. Failure to produce as ordered; subsequent proceedings; commissioners; presumption of death; right of possession

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1154.

Chapter 13.—EMINENT DOMAIN

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.
16–1303. Jurisdiction of Superior Court.

SUBCHAPTER II.—REAL PROPERTY FOR DISTRICT OF COLUMBIA

16–1311. Condemnation proceedings by District of Columbia.
16–1312. Juries for condemnation proceedings.

SUBCHAPTER III.—EXCESS PROPERTY FOR DEVELOPMENT OF SEAT OF GOVERNMENT

16–1336. Condemnation of excess real property by Commissioner; payment of awards, damages, and costs; no assessments for benefits.
16–1337 Construction of subchapter.

SUBCHAPTER V.—EXCESS PROPERTY FOR THE UNITED STATES

16–1381. Acquisition of property in excess of needs.
16–1382. Retention, for public use, of excess property.
16–1383. Availability of appropriations for purchases of excess property.
16–1384. Condemnation of excess real property by United States agencies; payment of awards, damages and costs.
16–1385. Construction of subchapter.

AMENDMENTS

1970—Section 145(f)(14) of Act July 29, 1970, Public Law 91–358, amended the analysis by inserting item 16–1303; by amending items 16–1311 and 16–1312 to read as above set out; by striking out item 16–1337; by redesignating item 16–1338 as item 16–1337; and by inserting items 16–1381 to 16–1385.

Section 145(f)(13) of Act July 29, 1970, Public Law 91–358, amended chapter by adding subchapter V thereto.

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 11–921.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 16–1301. Jurisdiction of District Court

The United States District Court for the District of Columbia has exclusive jurisdiction of all proceedings for the condemnation of real property authorized by subchapters IV and V of this chapter, with full power to hear and determine all issues of law and fact that may arise in the proceedings. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, § 145(f)(1), title I, 84 Stat. 557.)

AMENDMENT

1970—Section 145(f)(1) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 16–601) is referred to in section 29–806.

§ 16–1303. Jurisdiction of Superior Court

The Superior Court of the District of Columbia has jurisdiction of all proceedings for the condemnation of real property authorized by subchapters II and III of this chapter with full power to hear and determine all issues of law and fact that may arise in the proceedings. (Added, July 29, 1970, Pub. L. 91–358, § 145(f)(2), title I, 84 Stat. 558.)

AMENDMENT

1970—Section 145(f)(2) of Act July 29, 1970, Public Law 91–358 added this section.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SUBCHAPTER II.—REAL PROPERTY FOR DISTRICT OF COLUMBIA

§ 16–1311. Condemnation proceedings by District of Columbia

When real property in the District of Columbia is needed by the Commissioner of the District for sites of schoolhouses, fire or police stations, or for a right of way for sewers, or for any other municipal use authorized by Congress, and it can not be acquired by purchase from the owners thereof at a price satisfactory to the officers of the District authorized to negotiate for the property, a complaint may be filed in the Superior Court in the name of the District of Columbia for the condemnation of the property or right of way and the ascertainment of its value. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(f)(3), 84 Stat. 558.)

AMENDMENT

1970—Section 145(f)(3) of Act July 29, 1970, Public Law 91–358, amended section (A) by striking out "Board of Commissioners" and inserting in lieu thereof "Commissioner",

(B) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court",

(C) by striking out "name of the Board" and inserting in lieu thereof "name of the District of Columbia", and

(D) by striking out "Board of Commissioners" in the heading and inserting in lieu thereof "District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 16–601) is referred to in section 29–806.

NOTES TO DECISIONS

Construction

As used in eminent domain section of District of Columbia Code, the words "for any other municipal use authorized by Congress" are not subject to limitation of principle of statutory construction known as ejusdem generis, as purpose of the section is to provide for acquisition of real property by District of Columbia for any governmental purpose. *D.C. Federation of Civic Associations et al.* v. *T. F. Airis et al.* (1967, 275 F. Supp. 533). But see decision of the court in 391 F. 2d 478.

The government of the District of Columbia has power to acquire real estate for any governmental purpose by purchase and if its does not succeed in acquiring them by purchase, then by condemnation. *Id.*

§ 16–1312. Juries for condemnation proceedings

For purposes of this subchapter, a special jury list shall be prepared of not less than one hundred persons who are qualified jurors in the District of Columbia. When a jury is required for a condemnation proceeding under this subchapter, the names of such number of persons as may be necessary shall be selected from this list by lot and furnished to the Superior Court. (Dec. 23, 1963, 77 Stat. 572, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Mar. 27, 1968, Pub. L. 90–274, § 103(d), 82 Stat. 63; July 29, 1970, Pub. L. 91–358, § 145(f)(4), title I, 84 Stat. 558.)

AMENDMENTS

1970—Section 145(f)(4) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

1968—Section 103(d), act Mar. 27, 1968, Pub. L. 90–274, amended section as follows:

In subsection (a)(1), substituted "section 1865 of title 28, United State Code" for "Section 11–2301, and who, in addition, are owners of real property in the District";

In subsection (c), substituted "chapter 121 of title 28, United States Code" for "chapter 23 of title 11".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATE OF 1968 AMENDMENT AND APPLICABILITY IN CERTAIN CASES

Section 104, act Mar. 27, 1968, Pub. L. 90–274, provided that: "That Act [Repealing §§ 7–213a, 13–701, 11–2301 through 11–2305 (except the last par. of 11–2302) 11–2307 through 11–2312, amending §§ 7–318, 11–2306, 16–1312, 16–1357 and 22–1414] shall become effective two hundred and seventy days after the date of enactment: *Provided*, That this Act shall not apply in any case in which an indictment has been returned or petit jury empaneled prior to such effective date."

SHORT TITLE

The enacting clause of act Mar. 27, 1968, Pub. L. 90–274, provides: "That this Act [Amending chapter 121 of title 28, U.S.C. Code and certain other sections of title 28, U.S. Code; Repealing sections 7–213a, 13–701, 11–2301, 11–2302 in part, 11–2303 to 11–2305, and 11–2307 to 11–2312 inclusive, and amending sections 7–318, 16–1312, 16–1357, 22–1414 and 11–2306] may be cited as the 'Jury Selection and Service Act of 1968' ".

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 16–603) is referred to in sections 16–1313, 16–1357, 29–806.

§ 16–1313. Selection of jury; oath of jurors

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 16–604) is referred to in section 7–205, 29–806.

§ 16–1314. Declaration of taking; contents; deposit; transfer of title; determination; interest

(a) In an action pursuant to this subchapter, the plaintiffs may file in a cause, with the complaint or at any time before judgment, a declaration of taking, signed by the Commissioner, declaring that the property is thereby taken for use of the District of Columbia. The declaration of taking shall contain or have annexed thereto a—

(1) statement of the authority under which and the public use for which the property is taken;

(2) description of the property taken sufficient for the identification thereof;

(3) statement of the estate or interest in the property taken for public use;

(4) plan showing the property taken; and

(5) statement of the sum of money estimated by the Commissioner to be just compensation for the property taken.

(b) * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 145(f)(5), 84 Stat. 558.)

AMENDMENT

1970—Section 145(f)(5) of Act July 29, 1970, Public Law 91–358 amended subsection (a) by striking out "members of the Board of Commissioners" in the first sentence and inserting in lieu thereof "Commissioner", and by striking out "Commissioners" in paragraph (5) of the second sentence and inserting in lieu thereof "Commissioner".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 16–605) is referred to in sections 16–1315, 16–1316, 29–806.

§§ 16–1315, 16–1316

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections (formerly 16–605) are referred to in section 29–806.

§ 16–1317. Objections to jurors; appraisement

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 16–606) is referred to in sections 16–1318, 16–1319, 29–806.

§ 16–1318. Objections or exceptions to appraisement; new jury

(a) Objections or exceptions to an appraisement of the jury pursuant to section 16–1317 may be filed within twenty days after the return of the appraisement to the court. The court shall hear and determine any objections or exceptions so filed, and may vacate and set aside the appraisement, in whole or in part, when satisfied that it is unjust or unreasonable. If the appraisement is vacated and set aside, the court shall order the necessary number of new persons selected from the special jury list and, from among the persons so selected, shall appoint a new jury of five capable and disinterested persons who shall proceed as in the case of the first jury. The appraisement of the new jury shall be final when confirmed by the court.

(b) When an appraisement is vacated in part, the residue thereof as to the property condemned is not affected thereby. (Dec. 23, 1963, 77 Stat. 574, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(f)(6), 84 Stat. 558.)

AMENDMENT

1970—Section 145(f)(6) of Act July 29, 1970, Public Law 91–358, amended the third sentence of subsection (a) to read as above set out. For provisions of the third sentence of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 16–607) is referred to in section 29–806.

§ 16–1319. Payment of award; transfer of title

If the appraisement of the jury pursuant to section 16–1317 is not objected to by the parties interested, it shall be confirmed by the court, or, if the appraisement of the new jury is confirmed by the court, the Commissioner shall pay the amount awarded by the jury out of the appropriation made therefor or deposit it in the manner as directed by section 7–215, and thereupon the title to the property condemned shall vest in the District of Columbia. (Dec. 23, 1963, 77 Stat. 574, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(f)(7), 84 Stat. 558.)

AMENDMENT

1970—Section 145(f)(7) of Act July 29, 1970, Public Law 91–358 amended section by striking out "Board of Commissioners" and inserting "Commissioner."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 16–608) is referred to in sections 16–1314, 29–806.

§ 16–1320. Fixing time for return of verdict

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 16–609) is referred to in section 29–806.

§ 16–1321. Abandonment of proceedings; liability

In a condemnation proceeding pursuant to this subchapter, it is optional with the Commissioner to abide by the verdict of the jury and occupy the property appraised by them, or, within a reasonable time to be fixed by the court in its order confirming the verdict, to abandon the proceeding. If the proceeding is abandoned, the court shall award to the owner or owners of the property involved therein such sum or sums as will in the opinion of the court reimburse the owner or owners for all reasonable costs and expenses, including reasonable counsel fees, incurred by him or them in the proceeding. The sum or sums so awarded constitute a judgment or judgments against the District of Columbia. An owner is not entitled to the reimbursement in any case where the proceeding is abandoned at the request, or with the consent, of the owner of the property. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(f)(7), 84 Stat. 558.)

AMENDMENT

1970—Section 145(f)(7) of Act July 29, 1970, Public Law 91–358 amended section by striking out "Board of Commissioners" and inserting "Commissioner."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 16–610) is referred to in section 29–806.

SUBCHAPTER III.—EXCESS PROPERTY FOR DEVELOPMENT OF SEAT OF GOVERNMENT

§ 16–1331. Acquisition of property in excess of needs

In order to promote the orderly and proper development of the seat of government of the United States, the Commissioner of the District of Columbia may acquire, in the public interest, by gift, dedication, exchange, purchase, or condemnation, fee simple title to land or rights in, or on land, or easements or restrictions therein, within the District, for public uses, works, and improvements authorized by Congress, in excess of that actually needed for and essential to their usefulness, in order to preserve the view, appearance, light, and air and to enhance their usefulness to prevent the use of private property adjacent to them in such a manner as to impair the public benefit derived from the construction thereof, or to prevent inequities or hardship to the owners of adjacent private property by depriving them of the beneficial use of their property. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(f)(8), 84 Stat. 558.)

AMENDMENT

1970—Section 145(f)(8) of Act July 29, 1970, Public Law 91–358 amended section by striking out "Board of Commissioners of the District of Columbia, and agencies of the United States authorized by law to acquire real property," and inserting in lieu thereof "Commissioner of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 16–1332. Sale of excess property; restrictions on use; fair market value; disposition of moneys

(a) The Commissioner of the District of Columbia may, upon completion of public improvements:

(1) subdivide, and sell, at public or private sale, or exchange, any excess real property acquired pursuant to this subchapter; and

(2) to carry out such purposes, convey any property acquired in excess of that actually needed and which is not essential to the usefulness of the public works—

with such reservations concerning the future use and occupation of the property as, in their discretion, may be necessary to protect the public improvements.

(b) Property sold under this section shall be sold at not less than the fair market value at the time sold, as determined by appraisement of the assessor of the District of Columbia.

(c) Moneys received from sales or transfers of properties pursuant to this subchapter shall be covered into the Treasury of the United States to the credit of the revenues of the District of Columbia. (Dec. 23, 1963, 77 Stat. 575, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(f)(9), 84 Stat. 558.)

AMENDMENT

1970—Section 145(f)(9) of Act July 29, 1970, Public Law 91–358 amended section by striking out "Board of Commissioners of the District of Columbia and agencies of the United States authorized by law to acquire real property" in subsection (a) and inserting in lieu thereof "Commissioner of the District of Columbia", and by striking out ", and where the property sold was acquired under an appropriation authorized for the use of the District of Columbia, moneys received from the sale shall be deposited in the Treasury" in subsection (c).

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1333.

§ 16–1334. Retention, for public use, of excess property

When the authorities of the District of Columbia having jurisdiction of real property, rights, or easements acquired pursuant to this subchapter, elect to retain any of them for the use of the District, they may use the property, rights or easements for park, playground, highway, or alley purposes, or for any other lawful purpose that they deem advantageous or in the public interest. (Dec. 23, 1963, 77 Stat. 576, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(f)(10), 84 Stat. 558.)

AMENDMENT

1970—Section 145(f)(10) of Act July 29, 1970, Public Law 91–358 amended section by striking out "or the United States" wherever it appears.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–1336. Condemnation of excess real property by Commissioner; payment of awards, damages, and costs; no assessments for benefits

(a) When, pursuant to this subchapter, excess real property is condemned by the Commissioner, the condemnation proceedings for the acquisition of the property shall be in accordance with subchapter I of this chapter, sections 7–202 to 7–212, 7–213a, 7–214, 7–215, or sections 7–301 to 7–305, 7–313 to 7–318, 7–320, 7–321 and 7–323.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 145(f)(7), 84 Stat. 558.)

AMENDMENT

1970—Section 145(f)(7) of Act July 29, 1970, Public Law 91–358 amended section by striking out "Board of Commissioners" and inserting "Commissioner."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 16–1337. Repealed. July 29, 1970, Pub. L. 91–358, § 145(f)(11), 84 Stat. 558. [Note: Same section of act redesignated former section 16–1338 as § 16–1337.]

Former section which was a part of the Act of Dec. 23, 1963, Pub. L. 88–241, dealt with condemnation of excess real property by the United States and provided that it should be in accordance with provisions subchapter IV [Secs. 16–1351 et seq.,] and contained provisions for payment of awards.

§ 16–1337. [Former § 16–1338] Construction of subchapter

This subchapter does not repeal any provisions of existing law pertaining to the condemnation or acquisition of streets, alleys, or land, or the law or laws relating to the subdividing of lands in the District of Columbia. (Dec. 23, 1963, 77 Stat. 577, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; renumbered July 29, 1970, Pub. L. 91–358, title I, § 145(f)(11), 84 Stat. 558.)

AMENDMENT

1970—Section 145(f)(11) of Act July 29, 1970, Pub. L. 91–358, repealed § 16–1337 and redesignated §16–1338 as § 16–1337.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SUBCHAPTER IV.—REAL PROPERTY FOR UNITED STATES

SUBCHAPTER REFERRED TO IN OTHER SECTIONS

This subchapter is referred to in section 16–1384.

§ 16–1353. Declaration of taking; contents; deposit; transfer of title; determination; interest

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–1354, 16–1355, 16–1360.

§ 16–1356. Setting date for trial

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1357.

§ 16–1357. Drawing of jurors, and selection of jury; qualifications

When the date for trial has been set, as provided by section 16–1356, the court shall order the names of a number of persons, not less than twenty, selected from the special jury list provided by section 16–1312, and the names of the persons selected shall be certified to the clerk of the United States District Court for the District of Columbia as a panel of prospective jurors. The persons so certified shall be thereupon summoned by the United States marshal for the District of Columbia to appear in the court on the day specially fixed for the trial of the cause. Before selecting or impaneling the jury, the court may cause a second, third, or other further list of prospective jurors to be drawn, certified and summoned in like manner. From the persons so certified and summoned, the court, after examination on oath and in open court as to their qualifications, shall select and impanel a jury of five capable and disinterested persons who have the qualifications of jurors as prescribed by law for the courts of the District of Columbia, and in addition thereto are not in the service or employment of the United States or of the District of Columbia. (Dec. 23, 1963, 77 Stat. 578, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Mar. 27, 1968, Pub. L. 90–274, § 103(e), 82 Stat. 63; July 29, 1970, Pub. L. 91–358, title I, § 145(f)(12), 84 Stat. 558.)

AMENDMENTS

1970—Section 145(f)(12) of Act July 29, 1970, Public Law 91–358, amended the first sentence of section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

1968—Section 103(e), act Mar. 27, 1968, Pub. L. 90–274, amended section by striking out "are real property owners in the District and" from the last sentence.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATE OF 1968 AMENDMENT AND APPLICABILITY IN CERTAIN CASES

Section 104, act Mar. 27, 1968, Pub. L. 90–274, provided that: "This Act [Repealing, §§ 7–213a, 13–701, 11–2301 through 11–2305 (except the last par. of 11–2302), 11–2307 through 11–2312, amending §§ 7–318, 11–2306, 16–1312, 16–1357 and 22–1414] shall become effective two hundred and seventy days after the date of enactment: *Provided,* That this Act shall not apply in any case in which an indictment has been returned or petit jury empaneled prior to such effective date."

SHORT TITLE

The enacting clause of act Mar. 27, 1968, Pub. L. 90–274, provides: "That this Act [Amending chapter 121 of title 28, U.S. Code and certain other sections of title 28, U.S. Code; Repealing sections 7–213a, 13–701, 11–2301, 11–2302 in part, 11–2303 to 11–2305, and 11–2307 to 11–2312 inclusive, and amending sections 7–318, 16–1312, 16–1357, 22–1414 and 11–2306] may be cited as the 'Jury Selection and Service Act of 1968' ".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–1358, 16–1359, 16–1362.

§ 16–1358. Oath of jurors

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1359.

§ 16–1359. Inspection of property by jury; presence of parties

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–1360.

§ 16–1361. Verdict

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–1362, 16–1363.

SUBCHAPTER V.—EXCESS PROPERTY FOR THE UNITED STATES

AMENDMENT

1970—Section 145(f)(13) of Pub. L. 91–358, added this subchapter.

§ 16–1381. Acquisition of property in excess of needs

In order to promote the orderly and proper development of the seat of government of the United States, agencies of the United States authorized by law to acquire real property, may acquire, in the public interest, by gift, dedication, exchange, purchase, or condemnation fee simple title to land (or rights in or on land or easements or restrictions therein) within the District of Columbia for public uses, works, and improvements authorized by Congress, in excess of that actually needed for and essential to their usefulness, in order to preserve the view, appearance, light, and air and to enhance their usefulness, to prevent the use of private property adjacent to them in such a manner as to impair the public benefit derived from the construction thereof, or to prevent inequities or hardships to the owners of adjacent private property by depriving them of the beneficial use of their property. (Added, July 29, 1970, Pub. L. 91–358, § 145(f)(13), title I, 84 Stat. 559.)

§ 16–1382. Retention, for public use, of excess property

When the authorities of the United States having jurisdiction of real property (or rights or easements) acquired pursuant to this subchapter, elect to retain any of them for the use of the United States, they may use the property (or rights or easements) for park, playground, highway, or alley purposes, or for any other lawful purposes that they deem advantageous or in the public interest. (Added, July 29, 1970, Pub. L. 91–358, § 145(f)(13), title I, 84 Stat. 559.)

§ 16–1383. Availability of appropriations for purchases of excess property

When real property is purchased pursuant to this subchapter in excess of that needed for a particular project or improvement, appropriations available for the payment of the purchase price, costs, and expenses incident to the project or improvement may be used in the payment of the purchase price, costs, and expenses of excess real property purchased in connection with the project or improvement, as provided by this suchapter. (Added, July 29, 1970, Pub. L. 91–358, § 145(f)(13), title I, 84 Stat. 559.)

§ 16–1384. Condemnation of excess real property by United States agencies; payment of awards, damages and costs

(a) When excess real property is condemned by agencies of the United States as provided by this subchapter, the condemnation proceedings for the acquisition of the property shall be in accordance with subchapter IV of this chapter, or any laws in effect at the time of the commencement of condemnation proceedings for the acquisition of real property in the District of Columbia for the use of the United States.

(b) Appropriations available for the condemnation of property pursuant to subchapter IV of this chapter may be used in the payment of awards, damages, and costs in condemnation proceedings pursuant to that subchapter for the acquisition of excess real property as provided in this subchapter. (Added, July 29, 1970, Pub. L. 91–358, § 145(f)(13), title I, 84 Stat. 559.)

§ 16–1385. Construction of subchapter

This subchapter does not repeal any provisions of existing law pertaining to the condemnation or acquisition of streets, alleys, or land, or the laws relating to the subdividing of lands in the District of Columbia. (Added, July 29, 1970, Pub. L. 91–358, § 145(f)(13), title I, 84 Stat. 559.)

Chapter 15.—FORCIBLE ENTRY AND DETAINER

§ 16–1501. Definition; summons

When a person detains possession of real property without right, or after his right to possession has ceased, the Superior Court of the District of Columbia, on complaint under oath verified by the person aggrieved by the detention, or by his agent or attorney having knowledge of the facts, may issue a summons to the party complained of to appear and show cause why judgment should not be given against him for the restitution of possession. (Dec. 23, 1963, 77 Stat. 581, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(g)(1), 84 Stat. 560.)

AMENDMENT

1970—Section 145(g)(1) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia,".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 11–735, see also tables) is referred to in sections 15–318, 16–1502.

NOTES TO DECISIONS

Counterclaims

When a claim for rent in arrears is added to a complaint for possession, the tenant will be allowed to assert a counterclaim. *W. T. Bell et ano.* v. *Tsintolas Realty Company* (1970, 430 F. 2d 474,—U.S. App. D.C.—).

Deposits in Court

Although the court may, in exercise of its equitable jurisdiction, order that future rent be paid into registry of the court as it becomes due during pendency of litigations, such prepayment is not favored and should be ordered only when tenant has either asked for jury trial or asserted a defense based on violations of the housing code, and only upon motion of the landlord and after notice and opportunity for oral argument by both parties. *W. T. Bell et ano.* v. *Tsintolas Realty Company* (1970, 430 F.2d 474, — U.S. App. D.C. —).

Protective purpose of requiring a tenant who has asked for jury trial or asserted defense based on violations of housing code to landlord's complaint for possession to prepay rent will be served by requiring only future payments falling due after date order is issued to be paid into the court registry, and payment of back rent alleged to be due should not be required. *Id.*

Protective order requiring tenant who asked for jury trial or asserted a defense based on violations of housing code to landlord's complaint for possession to pay future rent payments falling due into court registry may issue only when the landlord has demonstrated an obvious need for such protection, and right to protective order is to be adjudged independently of right to jury trial and right to proceed in forma pauperis. *Id.*

In making determination of need to protect landlord suing for possession by requiring tenant who has asked for jury trial or asserted defense based on violations of housing code to pay future rental payments into court registry, the court may properly consider the amount of rent alleged to be due, number of months landlord has not received even a partial rental payment, reasonableness of rent for premises, amount of landlord's monthly obligations for the premises, whether tenant has been allowed to proceed in forma pauperis, and whether landlord faces substantial threat of foreclosure. *Id.*

Need of landlord for protective order requiring tenant who has asked for jury trial or asserted defense based on violations of housing code to landlord's complaint for possession to pay rental payments into registry of court must be compared with the apparent merits of defense based on housing code violations and relevant considerations would be whether housing violations alleged are de minimis or substantial, whether landlord has been notified of existence of defects and, if so, his response to that notice, and the date, if known, of the last repair or renovation relating to the alleged defect. *Id.*

Although tenant who has asked for jury trial or asserted defense based on violations of housing code to landlord's complaint for possession and who has been ordered to prepay rent into the court registry will ordinarily be called upon to pay the amounts which he originally contracted to pay as rent, trial court may consider imposition of a lesser amount when tenant makes strong showing that condition of dwelling is in violation of housing regulations or that landlord has not acted upon order to repair within reasonable time. *Id.*

Where tenant has been required to make payments into registry of court pending the disposition of landlord's complaint for possession, after conclusion of litigation trial court may properly find amount of rent in arrears, even when suit is not for back rent, and if landlord is exonerated of all housing code violations fund may be paid to landlord as rental for the litigation period, but the prepayment fund should not be applied directly against unpaid rent even if only de minimis violations existed during period at issue. *Id.*

If, at the conclusion of proceeding on landlord's complaint for possession, it is determined that housing code violations have nullified obligation of tenant to pay any rent for period at issue, and tenant has been ordered to make prepayment of rent during pendency of litigation, tenant may recover fund on the assumption that, absent convincing proof from the landlord, housing code violations sufficient to nullify obligation to pay rent have continued. *Id.*

If the trial of landlord's complaint for possession results in determination that portion of rent prepaid by tenant during pendency of litigation is owing landlord, that same proportion may be applied in dividing funds between landlord and tenant. *Id.*

If, at conclusion of trial on landlord's complaint for possession, either party seeks to show, for purpose of disposition of escrow fund created by tenant's prepayment of rent during litigation period, that condition of the premises changed during litigation period, either party should be permitted to amend complaint or answer to alleged change in condition, and finder of facts should make separate finding as to condition of premises at time at which amendment was filed. *Id.*

If tenant who has been required to prepay rent during litigation on landlord's complaint for possession abandons the premises before case goes to trial, money paid into court by tenant should be returned to the tenant unless landlord promptly goes to court to seek money judgment for rent actually due during period rent was being paid into court. *Id.*

Even if a default judgment is entered in landlord's suit for possession where tenant has paid future rent into court, judgment is not res judicata for the amount of rent actually due during period rent was paid into court. *Id.*

Grounds for eviction

It was the intent of Congress, which directed enactment of District of Columbia housing code, that, while landlord might evict for any legal reason or for no reason at all, he was not free to evict tenant in retaliation for tenant's report of housing code violations to the authorities. *Y. C. Edwards* v. *N. Habib* (1968, 397 F. 2d 687, 130 U.S. App. D.C. 126, cert. denied 89, S. Ct. 618, 393 U.S. 1016, 21 L. Ed. 2d 560).

Pleading

Once a suit for possession is final, a claim for rent may not be subsequently added. *W. T. Bell et ano.* v. *Tsintolas Realty Company* (1970, 430 F. 2d 474, — U.S. App. D.C. —).

Preliminary injunction

In this case where numerous other remedies were available to landlord, grant of preliminary injunction was improper prohibiting tenants, who claimed that buildings were in violation of housing code, from paying rent to third party and which directed rentals deposited to be paid into court for delivery to landlord even though landlord was in financial difficulty, was in default on trust payments, and was without other available funds. *R. Dorfmann et al., etc.* v. *R. B. Boozer et al.* (1969, 414 F. 2d 1168, 134 U.S. App. D.C. 272).

§ 16–1502. Service of summons

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 11–736) is referred to in section 15–318.

NOTES TO DECISIONS

Motion to vacate default judgment

In a case where a complaint for possession of premises did not allege the type of tenancy, total rent due and owing or period during which rent was in default, and there was no showing that a notice to quit had been served upon the defendant and defendant testified that she never saw complaint and filed a motion to vacate default judgment 17 days after answer had been due and that she was common-law wife of defendant and had been living in premises for number of years, default judgment would be vacated. *M. Bevins* v. *B. F. Lewis* (D.C. App. 1969, 254 A. 2d. 404).

Personal service

Although the summons in a suit for possession may, as a last resort, be served by posting, the tenant who is sued for rent in arrears must be served personally. *W. T. Bell et ano.* v. *Tsintolas Realty Company* (1970, 430 F. 2d 474 —— U.S. App. D.C. ——).

§ 16–1503. Judgment and execution for possession

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 11–737) is referred to in section 15–318.

NOTES TO DECISIONS

Preliminary injunction

In this case where numerous other remedies were available to landlord, grant of preliminary injunction was improper prohibiting tenants, who claimed that buildings were in violation of housing code, from paying rent to third party and which directed rentals deposited to be paid into court for delivery to landlord even though landlord was in financial difficulty, was in default on trust payments, and was without other available funds. *R. Dorfmann, et al., etc.* v. *R. B. Boozer et al.* (1969, 414 F. 2d 1168, 134 U.S. App. D.C. 272).

§ 16–1504. Repealed. July 29, 1970, Pub. L. 91–358, § 145 (g)(2), title I, 84 Stat. 560

Section being a part of the Act of Dec. 23, 1963, Pub. L. 88–241 dealt with the question of certifying the issue of title to property to the United States District Court for the District of Columbia.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

NOTES TO DECISIONS

Constitutionality

Statute requiring an undertaking with sufficient surety as condition precedent to certification to United States District Court of action for possession of real estate wherein defendant pleads title in himself, or in another under whom he claims, was not unconstitutional on

grounds that as applied to particular defendant it required her to post undertaking which she was financially unable to secure, and thus by reason of her indigency or lack of funds she was deprived of only defense against claim for possession. *T. G. Thompson* v. *S. Mazo* (D.C. App. 1968, 245 A. 2d 122).

Construction

This section, providing for certification of possessory action to district court when defendant pleads title, contemplates a single, expeditious trial in which determination of who has "title" will underlie decision on who should take "possession". *T. G. Thompson* v. *S. Mazo* (1970, 421 F. 2d 1156, 137 U.S. App. D.C. 221).

Implicit in statute dealing with summary action for possession of realty is right of successful plaintiff to obtain recovery of mesne profits as adjunct to proceeding for determining title and possession. *T. J. Scheve et ano.* v. *L. H. Hollins et al.* (1968, 403 F. 2d 566, 131 U.S. App. D.C. 160).

Mootness

Even though property involved in possessory action and to which defendant pleaded title was owned by person not a party who acquired title on foreclosure of second deed of trust after commencement of possessory action, case was not moot since judgment awarding possession to plaintiff might affect defendant's liability for rent during period of her occupancy and plaintiff's liability for rents collected thereafter. *T. G. Thompson* v. *S. Mazo* (1970, 421 F. 2d 1156, 137 U.S. App. DC 221).

Even though title to property involved in possessory action was acquired after commencement of the suit by a person who was not a party thereto, the case is not moot where serious questions are presented which affect all defendants financially unable to post the "undertaking" required to plead title as a defense to a possessory action. *Id.*

Purpose of statute

Although statute requiring an undertaking with sufficient surety as condition precedent to certification to United States District Court of action for possession of real estate wherein defendant pleads title in himself, or in another under whom he claims, was designed to permit defendant to file plea of title and have question of title determined by court having jurisdiction to try title to real property, statute was also designed to protect plaintiff in such action if plea of title failed. *T. G. Thompson* v. *S. Mazo* (D.C. App. 1968, 245 A. 2d 122).

Recovery of damages

Plaintiffs who brought action in District of Columbia court of general sessions for possession of realty, and defendants claimed title to realty and filed a $1,250 title bond under District of Columbia statute to pay all intervening damages and costs and reasonable intervening rent for premises, and case was certified to United States District Court for District of Columbia for determination of title issue, and defendants remained in possession for about 2 years, and reasonable rent for realty was $140 per month, and district court found title in plaintiffs, were entitled to recover full bond amount of $1,250 and were not limited to nominal damages. *T. J. Scheve et ano.* v. *L. H. Hollins et al.* (1968, 403 F. 2d 566, 131 U.S. App. D.C. 160).

Review

Where plaintiff in possessory action chose Court of General Sessions as his forum and trial judge had struck defendant's plea of title, failure of defendant to seek review of district court's dismissal of his suit for reconveyance as moot in light of the General Sessions' judgment did not preclude appeal from decision of District of Columbia Court of Appeals affirming judgment of Court of General Sessions even though decision of district court, had it reached the merits, would have involved same questions which defendant sought to have litigated by pleading title in the possessory suit. *T. G. Thompson* v. *S. Mazo* (1970, 421 F. 2d 1156, 137 U.S. App. D.C. 221).

Undertaking

Under this section providing that when defendant in possessory action pleads title to premises and enters into undertaking to pay all intervening damages and reasonable rent the proceedings shall be certified to district court, the "undertaking" need not be in the form of a lump-sum bond if defendant is unable to provide it and may be an agreement for payment in escrow of amount that will assure plaintiff if he wins he will at least receive reasonable intervening rent. *T. G. Thompson* v. *S. Mazo* (1970, 421 F. 2d 1156, 137 U.S. App. D.C. 221).

Under this section providing for certification of all possessory action to district court when defendant pleads title to premises and enters into an undertaking, factors to be considered in determining proper amount of payments in escrow for the undertaking are a reasonable rental for the premises, the defendant's income, and amount of payments which are presently being made to other mortgagees, with purpose of arriving at payments which will impose fair obligation on defendant, permit case to be heard on merits, and assure plaintiff that if he wins he will receive reasonable intervening rent. *Id.*

Under this section providing for certification of possessory action to district court when defendant pleads title to premises and enters into undertaking with sufficient surety, to protect plaintiff's interests, the court may exercise its discretion over the "sufficient surety" by requiring defendant to stipulate that he will confess to judgment in possessory action should be default without good cause. *Id.*

§ 16–1505. Conclusiveness of judgment

A judgment of the Superior Court of the District of Columbia in a proceeding pursuant to this chapter is not a bar to any afteraction brought by either party, and does not conclude any question of title between them, where title is not pleaded by the defendants. (Dec. 23, 1963, 77 Stat. 582, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(g)(1), 84 Stat. 560.)

AMENDMENT

1970—Section 145(g)(1) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 11–739, see also tables) is referred to in section 15–318.

NOTES TO DECISIONS

Deposits in court

Even if a default judgment is entered in landlord's suit for possession where tenant has paid future rent into court registry, judgment is not res judicata for the amount of rent actually due during period rent was paid into court. *W. T. Bell et ano.* v. *Tsintolas Realty Company* (1970, 430 F. 2d 474, —— U.S. App. D.C. ——).

Chapter 17.—GAMING TRANSACTIONS

§ 16–1701. Invalidity of gaming contracts

REFERENCES IN TEXT

Chapters 1 to 10 of title 28 of the D.C. Code were repealed by act Dec. 30, 1963, Pub. L. 88–243. The same Public Law enacted the Uniform Commercial Code, set out as subtitle I, of title 28, consisting of articles 1 to 10.

§ 16–1702. Recovery of losses at gaming

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–1703, 16–1704.

Chapter 19.—HABEAS CORPUS

Sec.
16–1901. Petition; issuance of writ.

AMENDMENT

1970—Section 145(h)(2) of Act July 29, 1970. Public Law 91–358 amended analysis relating to item 16–1901 to read as above set out.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 11–921.

§ 16–1901. Petition; issuance of writ

(a) A person committed, detained, confined, or restrained from his lawful liberty within the District, under any color or pretense whatever, or a person in his behalf, may apply by petition to the appropriate court, or a judge thereof, for a writ of habeas corpus, to the end that the cause of the commitment, detainer, confinement, or restraint may be inquired into. The court or the judge applied to, if the facts set forth in the petition make a prima facie case, shall forthwith grant the writ, directed to the officer or other person in whose custody or keeping the party so detained is returnable forthwith before the court or judge.

(b) Petitions for writs directed to Federal officers and employees shall be filed in the United States District Court for the District of Columbia.

(c) Petitions for writs directed to any other person shall be filed in the Superior Court of the District of Columbia. (Dec. 23, 1963, 77 Stat. 583, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(h)(1); 84 Stat. 560.)

AMENDMENT

1970—Section 145(h)(1) of Act July 29, 1970, Public Law 91–358 amended section—

(A) by striking out "the United States District Court for the District of Columbia" in the first sentence and inserting in lieu thereof "the appropriate court";

(B) by inserting "(a)" immediately before "A person" and by adding after and below the last sentence new subsections (b) and (c) to read as above set out; and

(C) by striking out "to District Court" in the section heading.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 21.—JOINT CONTRACTS

§ 16–2101. Definition of joint and several contracts

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–2102, 16–2103.

NOTES TO DECISIONS

Indispensable parties

An action for rent against tenant could not be dismissed for lack of indispensable parties, namely, the other tenants, since tenants were jointly liable for the rent and could be sued either jointly or separately. *A. P. Ostrow v. G. Smulkin, et al., etc.* (D.C. App. 1969, 249 A. 2d 520).

Chapter 23.—FAMILY DIVISION PROCEEDINGS

SUBCHAPTER I.—PROCEEDINGS REGARDING DELINQUENCY, NEGLECT, OR NEED OF SUPERVISION

Sec.

16–2301. Definitions.
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16–2312. Detention or shelter care hearing; intermediate disposition.
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16–2314. Consent decree.
16–2315. Physical and mental examinations.
16–2316. Conduct of hearings; evidence.
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16–2318. Order of adjudication noncriminal.
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16–2320. Disposition of child who is neglected, delinquent, or in need of supervision.
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16–2323. Modification, termination of orders.
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16–2325. Court costs and expenses.
16–2326. Probation revocation; disposition.
16–2327. Interlocutory appeals.
16–2328. Finality of judgments; appeals; transcripts.
16–2329. Time computation.
16–2330. Juvenile case records; confidentiality; inspection and disclosure.
16–2331. Juvenile social records; confidentiality; inspection and disclosure.
16–2332. Police and other law enforcement records.
16–2333. Fingerprint records.
16–2334. Sealing of records.
16–2335. Unlawful disclosure of records; penalties.
16–2336. Additional powers of the Director of Social Services.
16–2337. Emergency medical treatment.

SUBCHAPTER II.—PATERNITY PROCEEDINGS

16–2341. Representation.
16–2342. Time of bringing complaint.
16–2343. Blood tests.
16–2344. Exclusion of public.
16–2345. New birth record upon marriage of natural parents.
16–2346. Reports to Director of Public Health.
16–2347. Death of respondent; liability of estate.
16–2348. Paternity records; confidentiality; inspection and disclosure.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–921, 24–602.

REVISION OF CHAPTER 23, OF TITLE 16 OF THE DISTRICT OF COLUMBIA

Sec. 121(a) of Act July 29, 1970, Pub. L. 91–350, amended chapter 23 of title 16 of the D.C. Code to read as hereinafter set out. The original chapter 23, which this section revises and amends generally, was a part of section 1, of the Act of Dec. 23, 1963, Pub. L. 88–241; 77 Stat. 478, et seq., the original chapter was entitled "Juvenile Court Proceedings" and consisted of sections 16–2301 to 16–2316, 16–2341 to 16–2356 and 16–2381 to 16–2384, whereas the amended and revised chapter is entitled "Family Division Proceedings" and consists of sections 16–2301 to 16–2337 and 16–2341 to 16–2348. For the provisions of the original chapter as the same may have been previously amended, see the 1967 edition of the code, together with Supplement III thereto.

SUBCHAPTER I.—PROCEEDINGS REGARDING DELINQUENCY, NEGLECT, OR NEED OF SUPERVISION

§ 16–2301. Definitions

As used in this subchapter—

(1) The term "Division" means the Family Division of the Superior Court of the District of Columbia.

(2) The term "judge" means a judge assigned to the Family Division of the Superior Court.

(3) The term "child" means an individual who is under 18 years of age, except that the term "child" does not include an individual who is sixteen years of age or older and—

(A) charged by the United States attorney with (i) murder, forcible rape, burglary in the first degree, robbery while armed, or assault with intent to commit any such offense, or (ii) an offense listed in clause (i) and any other offense properly joinable with such an offense;

(B) charged with an offense referred to in subparagraph (A)(i) and convicted by plea or verdict of a lesser included offense; or

(C) charged with a traffic offense.

For purposes of this subchapter the term "child" also includes a person under the age of twenty-one who is charged with an offense referred to in subparagraph (A)(i) or (C) committed before he attained the age of sixteen, or a delinquent act committed before he attained the age of eighteen.

(4) The term "minor" means an individual who is under the age of twenty-one years.

(5) The term "adult" means an individual who is twenty-one years of age or older.

(6) The term "delinquent child" means a child who has committed a delinquent act and is in need of care or rehabilitation.

(7) The term "delinquent act" means an act designated as an offense under the law of the District of Columbia, or of a State if the act occurred in a State, or under Federal law. Traffic offenses shall not be deemed delinquent acts unless committed by an individual who is under the age of sixteen.

(8) The term "child in need of supervision" means a child who—

(A)(i) is subject to compulsory school attendance and habitually truant from school without justification;

(ii) has committed an offense committable only by children; or

(iii) is habitually disobedient of the reasonable and lawful commands of his parent, guardian, or other custodian and is ungovernable; and

(B) is in need of care or rehabilitation.

(9) The term "neglected child" means a child—

(A) who has been abandoned or abused by his parent, guardian, or other custodian;

(B) who is without proper parental care or control, subsistence, education as required by law, or other care or control necessary for his physical, mental, or emotional health, and the deprivation is not due to the lack of financial means of his parent, guardian, or other custodian;

(C) whose parent, guardian, or other custodian is unable to discharge his responsibilities to and for the child because of incarceration, hospitalization, or other physical or mental incapacity; or

(D) who has been placed for care or adoption in violation of law.

No child who in good faith is under treatment solely by spiritual means through prayer in accordance with the tenets and practices of a recognized church or religious denomination by a duly accredited practitioner thereof shall, for that reason alone, be considered a neglected child for purposes of this subchapter.

(10) The term "mentally ill child" means a child who is mentally ill within the meaning of section 21–501.

(11) The term "substantially retarded child" means a child who is substantially retarded within the meaning of section 21–1101.

(12) The term "custodian" means a person or agency, other than a parent or legal guardian, to whom legal custody of a child has been given by court order and who is acting in loco parentis.

(13) The term "detention" means the temporary, secure custody of a child in facilities, designated by the Division, pending a final disposition of a petition.

(14) The term "shelter care" means the temporary care of a child in physically unrestricting facilities, designated by the Division, pending a final disposition of a petition.

(15) The term "detention or shelter care hearing" means a hearing to determine whether a child who is in custody should be placed or continued in detention or shelter care.

(16) The term "factfinding hearing" means a hearing to determine whether the allegations of a petition are true.

(17) The term "dispositional hearing" means a hearing, after a finding of fact, to determine—

(A) whether the child in a delinquency or need of supervision case is in need of care or rehabilitation and, if so, what order of disposition should be made; or

(B) what order of disposition should be made in a neglect case.

(18) The term "probation" means a legal status created by Division order following an adjudication of delinquency or need of supervision, whereby a minor is permitted to remain in the community subject to appropriate supervision and return to the Division for violation of probation at any time during the period of probation.

(19) The term "protective supervision" means a legal status created by Division order in neglect cases whereby a minor is permitted to remain in his home under supervision, subject to return to the Division during the period of protective supervision.

(20) The term "guardianship of the person of a minor" means the duty and authority to make important decisions in matters having a permanent effect on the life and development of the minor, and concern with his general welfare. It includes (but is not limited to)—

(A) authority to consent to marriage, enlistment in the armed forces of the United States, and major medical, surgical, or psychiatric treatment; to represent the minor in legal actions; and to make other decisions concerning the minor of substantive legal significance;

(B) the authority and duty of reasonable visitation (except as limited by Division order);

(C) the rights and responsibilities of legal custody when guardianship of the person is exercised by the natural or adoptive parent (except where legal custody has been vested in another person or an agency or institution); and

(D) the authority to exercise residual parental rights and responsibilities when the rights of his parents or only living parent have been judicially terminated or when both parents are dead.

(21) The term "legal custody" means a legal status created by Division order which vests in a custodian the responsibility for the custody of a minor which includes—

(A) physical custody and the determination of where and with whom the minor shall live;

(B) the right and duty to protect, train, and discipline the minor; and

(C) the responsibility to provide the minor with food, shelter, education, and ordinary medical care.

A Division order of "legal custody" is subordinate to the rights and responsibilities of the guardian of the person of the minor and any residual parental rights and responsibilities.

(22) The term "residual parental rights and responsibilities" means those rights and responsibilities remaining with the parent after transfer of legal custody or guardianship of the person, including (but not limited to) the right of visitation, consent to adoption, and determination of religious affiliation and the responsibility for support. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 523.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–721, 11–1101.

§ 16–2302. Transfer of criminal matters to Family Division

(a) If it appears to a court, during the pendency of a criminal charge and before the time when jeopardy would attach in the case of an adult, that a minor defendant was a child at the time of an alleged offense, the court shall forthwith transfer the charge against the defendant, together with all papers and documents connected therewith, to the Division. All action taken by the court prior to transfer of the case shall be deemed null and void unless the Division transfers the child for criminal prosecution under section 16–2307.

(b) If at the time of an alleged offense, a minor defendant was a child but this fact is not discovered by the court until after jeopardy has attached, the court shall proceed to verdict. If judgment has not been entered, the court shall determine on the basis of the criteria in section 16–2307(e) whether to enter judgment or to refer the case to the Division for disposition. If judgment has been entered, it shall not be set aside on the ground of the defendant's age unless the court, after hearing, determines that (1) neither the defendant nor his counsel, prior to the entry of judgment, had reason to believe that defendant was under the age of eighteen years, and (2) the defendant would not have been transferred for criminal prosecution if his age had been known and the procedure set forth in section 16–2307 had been followed. If the judgment is set aside, the case shall be referred to the Division for disposition. The disposition and all prior proceedings in any court of any case referred to the Division for disposition pursuant to this section shall be subject to the confidentiality provisions of sections 16–2330 through 16–2335.

(c) The court making a transfer shall order the minor to be taken forthwith to the Division or to a place of detention designated for children by the Division. The Division shall than proceed as provided in this subchapter.

(d) Nothing in this section shall affect the jurisdiction of a court over a person twenty-one years of age or older. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 525.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–2312, 23–563.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also §§ 11–1551, 11–1552, and 11–1586 in 1967 Edition]

Adequacy of petition

The petition in this case which alleged briefly the facts which brought the juvenile within jurisdiction of the juvenile court, and notified him of the place, time and date of alleged unlawful conduct, the nature of the violation, the names of the alleged co-perpetrators of the assault and the name of the victim, and the name of intake officer who investigated the case, was adequate to apprise the juvenile of the nature and substance of proceeding against him and the juvenile was not prejudiced by any slight disparity between the allegations that he had assaulted victim with dangerous weapon and robbed victim and the proof which established that he had assaulted another who was with the victim. *In the Matter of J. E. Coward* (D.C. App. 1969, 254 A. 2d 730; remanded 429 F. 2d 214, — U.S. App. D.C. —).

Administrative action

Mere fact that proof tended to reveal at a suspension hearing before permit control officer of District of Columbia Department of Motor Vehicles that 17-year-old driver, whose license was suspended, was driving while under influence of alcohol did not thereby convert the proceedings, administrative in character, into a judicial proceeding of the kind Congress assigned exclusively to juvenile court. *K. P. Murphy, a minor etc.* v. *W. D. Heath, Director, etc.* (D.C. App. 1969, 256 A. 2d 421).

The court held that the exclusive jurisdiction in judicial proceedings conferred by Juvenile Court Act on the juvenile court is not a jurisdictional bar to the administrative action of suspending motor vehicle operator's permit of 17-year-old driver. *Id.*

Beyond control

Court deemed it inappropriate to construe "beyond control" section of Juvenile Court Act until it was certain that section was the only basis upon which juvenile court acted. *In the Matter of J. G. Elmore* (1967, 382 F. 2d 125, 127 U.S. App. D.C. 176).

Congressional objective

Congressional objective in passing Juvenile Court Act providing that when child is removed from his own family, court shall secure for him custody, care and discipline as nearly possible equivalent to that which should have been given him by his parents, comprehends psychiatric care in appropriate cases. *E. Creek Jr.* v. *W. J. Stone* (1967, 379 F. 2d 106, 126 U.S. App. D.C. 329).

Construction

Juvenile court legislation rests, in various aspects, on premise that state is acting as parens patriae, that it is undertaking in effect to provide for child the kind of environment he should have been receiving at home, and that it is because of this that appropriate officials, while subject to requirement that juvenile proceedings must not be arbitrary or unfair, are permitted to take and retain custody of child without affording him all various procedural rights available to adults suspected of crime. *In E. Creek Jr.* v. *W. J. Stone* (1967, 379 F. 2d 106, 126 U.S. App. D.C. 329).

Due process

Due process of law requires, as the Supreme Court has said that juveniles be given "notice which would be

deemed constitutionally adequate in a civil or criminal proceeding." *In the Matter of J. E. Coward* (D.C. App. 1969, 254 A. 2d 730; remanded 429 F. 2d 214, — U.S. App. D.C. —).

The court held, that the juvenile must be made aware of the nature of the allegations to be considered at the hearing to determine whether he is within jurisdiction of juvenile court, and the factual circumstances giving rise to such allegations, and the notice must be sufficiently explicit to enable the juvenile to defend intelligently. *Id.*

In proceeding against juvenile for violation of law, ordinance or regulation, constitutional concept of due process must be observed. *In the Matter of K. L. Wylie* (D.C. App. 1967, 231 A. 2d 81).

Guilt beyond reasonable doubt

In this case the court held that, in a proceeding in juvenile court a charge that juvenile had committed a criminal act alleged could not be proven by preponderance of evidence; the correct standard was that of proof beyond reasonable doubt. *In the Matter of N. M. Ellis et al.* (1970, 429 F. 2d 214, — U.S. App. D.C. —, remanding 253 A. 2d 789 and 254 A. 2d 730).

Proof of guilt beyond reasonable doubt is unnecessary and improper in juvenile court proceeding. *In the Matter of K. L. Wylie* (D.C. App. 1967, 231 A. 2d 81).

Jurisdiction—Extent of

Juvenile court has original and exclusive jurisdiction in all cases concerning child who has violated law of District of Columbia. *In the Matter of N. M. Ellis* (D.C. App. 1969, 253 A. 2d 789; remanded 429 F. 2d 214, — U.S. App. D.C. —).

Jurisdiction to punish for contempt

In a case where temporary restraining orders issued by district court dealing with conditions of unrest on college campuses purported to apply to students and nonstudents, adults or juveniles without exception, sections 11–1551, 11–1552 and 11–1581 did not deprive district court of power to punish juvenile offenders for contempt of its restraining orders. *In the Matter of A. Williams, Jr.* and *M. M. Coates* (1969, 306 F. Supp. 617).

Petition—Sufficiency of

Petition in juvenile court which alleged that accused struck victim in eye, then grabbed him and asked him for his money, was subject to interpretation that charge against alleged delinquent was robbery, or attempted robbery, or assault, or all three and was too vague and indefinite to apprise juvenile of charges against him. *In the Matter of K. L. Wylie* (D.C. App. 1967, 231 A. 2d 81).

Remand to juvenile court after conviction

Conviction of minor remanded with instructions that District Court remand to Juvenile Court for hearing de novo and determination on waiver issue, consistent with standards set forth by Supreme Court; should decision of Juvenile Court be against waiver, indictment should be dismissed, but should waiver be found appropriate, District Court should follow prescribed procedure for trial of minor defendant. *J. J. Watkins* v. *United States* (1966, 373 F. 2d 681, 126 U.S. App. D.C. 21).

Conviction of minor remanded with instructions that District Court remand to Juvenile Court for hearing de novo and determination on waiver issue, consistent with standards set forth by Supreme Court; should decision of Juvenile Court be against waiver, indictment should be dismissed, but should waiver be found appropriate, District Court should follow prescribed procedure for trial of minor defendant. *J. L. Watkins* v. *United States* (1966, 373 F. 2d 681, 126 U.S. App. D.C. 21, see also 119 U.S. App. D.C. 409).

Rulings to be applied prospectively

Ruling that juvenile charged with offense is entitled to notice of specific issues, specific instructions on such issues, and disapproval of use of verdict of "involved" applies prospectively only. *In the Matter of K. L. Wylie* (D.C. App. 1967, 231 A. 2d 81).

Special interrogatories

If use of verdict of guilty or not guilty is inadvisable, juvenile court may use special interrogatories in cases involving offenses by juveniles. *In the Matter of K. L. Wylie* (D.C. App. 1967, 231 A. 2d 81).

Sufficiency of allegation

Allegation that a juvenile committed a crime is included in petitions such as the one in the instant case that a minor was within jurisdiction of juvenile court by way of alleging required jurisdictional condition and government is required to prove its allegations only by a preponderance of the evidence. *In the Matter of J. E. Coward* (D.C. App. 1969, 254 A. 2d 730; remanded 429 F. 2d 214, — U.S. App. D.C. —).

The precision required in criminal indictments and conformity of the evidence thereto, is inappropriate in juvenile actions, which are in the nature of civil commitment proceedings. *Id.*

Sufficiency of record

The record amply supports the finding that the minor, who was held to be within jurisdiction of the juvenile court, actively participated in assault on occupants of automobile. *In the Matter of J. E. Coward* (D.C. App. 1969. 254 A. 2d 730; remanded 429 F. 2d 214, — U.S. App. D.C. —).

§ 16–2303. Retention of jurisdiction

For purposes of this subchapter, jurisdiction obtained by the Division in the case of a child shall be retained by it until the child becomes twenty-one years of age, unless jurisdiction is terminated before that time. This section does not affect the jurisdiction of other divisions of the Superior Court or of other courts over offenses committed by a person after he ceases to be a child. If a minor already under the jurisdiction of the Division is convicted in the Criminal Division or another court of a crime committed after he ceases to be a child, the Family Division may, in appropriate cases, terminate its jurisdiction. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 525.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–2304. Right to counsel

(a) A child alleged to be delinquent or in need of supervision is entitled to be represented by counsel at all critical stages of Division proceedings, including the time of admission or denial of allegations in the petition and all subsequent stages. If the child and his parent, guardian, or custodian are financially unable to obtain adequate representation, the child shall be entitled to have counsel appointed for him in accordance with rules established by the Superior Court. In its discretion, the Division may appoint counsel for the child over the objection of the child, his parent, guardian, or other custodian.

(b) When a child is alleged to be neglected, the parent, guardian, or custodian of the child named in the petition is entitled to be represented by counsel at all critical stages of the Division proceedings and, if financially unable to obtain adequate representation, to have counsel appointed in accordance with rules established by the Superior Court. The Division shall, where appropriate, appoint separate counsel to represent the child, as provided in section 16–918. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 526.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–2306, 16–2308, 16–2311, 16–2312.

§ 16–2305. Petition; contents; amendment

(a) Complaints alleging delinquency, need of supervision, or neglect shall be referred to the Director of Social Services who shall conduct a preliminary inquiry to determine whether the best interests of the child or the public require that a petition be filed. If judicial action appears warranted, under intake criteria established by rule of the Superior Court, the Director shall recommend that a petition be filed. If the Director decides not to recommend the filing of a petition, the complainant in a delinquency or neglect case shall have a right to have that decision reviewed by the Corporation Counsel, and the Director shall notify the complainant of such right of review.

(b) Petitions initiating judicial action may be signed by any person who has knowledge of the facts alleged or, being informed of them, believes they are true, except that petitions alleging need of supervision may only be signed by the Director of Social Services, a representative of a public agency or a nongovernmental agency licensed and authorized to care for children, a representative of a public or private agency providing social service for families, a school official, or a law enforcement officer. Petitions shall be verified and verification may be upon information or belief.

(c) Each petition shall be prepared by the Corporation Counsel after an inquiry into the facts and a determination of the legal basis for the petition. If the Director of Social Services has refused to recommend the filing of a delinquency or neglect petition, the Corporation Counsel, on request of the complainant, shall review the facts presented and shall prepare and file a petition if he believes such action is necessary to protect the community or the interests of the child. Any decision of the Corporation Counsel on whether to file a petition shall be final.

(d) A petition shall be filed by the Corporation Counsel within seven days (excluding Sundays and legal holidays) after the complaint has been referred to the Director of Social Services, except as otherwise provided in section 16–2312. A petition shall set forth plainly and concisely the facts which give the Division jurisdiction of the child under section 11–1101(13). In delinquency cases the petition shall also state the specific statute or ordinance on which the charge is based. If delinquency or need of supervision is alleged, a statement shall be included in the petition that the child appears to be in need of care or rehabilitation. The petition shall contain such other facts and information as may be required by rules of the Superior Court.

(e) A petition may be amended by leave of the Division on motion of the Corporation Counsel or counsel for the child, at any time prior to the conclusion of the factfinding hearing. The Division shall grant the Corporation Counsel, the child, and his parent, guardian, or custodian notice of the amendment and, where necessary, additional time to prepare.

(f) The District of Columbia shall be a party to all proceedings under this subchapter. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 526.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–2334.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 16–2302 and other sections in title 16, chapter 23 in 1967 edition]

Adequacy of petition

The petition in this case which alleged briefly the facts which brought the juvenile within jurisdiction of the juvenile court, and notified him of the place, time and date of alleged unlawful conduct, the nature of the violation, the names of the alleged co-perpetrators of the assault and the name of the victim, and the name of intake officer who investigated the case, was adequate to apprise the juvenile of the nature and substance of proceedings against him and the juvenile was not prejudiced by any slight disparity between the allegations that he had assaulted victim with dangerous weapon and robbed victim and the proof which established that he had assaulted another who was with the victim. *In the Matter of J. E. Coward* (D.C. App. 1969, 254 A. 2d 730; remanded 429 F. 2d 214, — U.S. App. D.C. —).

Construction

In this case, the court concluded that the Youth Division Officer, who has not participated in arrest of juvenile, has gathered "personal knowledge" of circumstances which make up the "case" concerning the juvenile while performing his functions, and he may verify petition to bring juvenile within jurisdiction of juvenile court. *In re M. C. Taylor* (D.C. App. 1970, 268 A. 2d 522).

Custody, care and discipline

Under provisions of Juvenile Court Act that when child is removed from his own family, court shall secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given him by his parents, when removal from family is deemed necessary juvenile is not automatically to be committed to the receiving home; the juvenile court has duty to fashion appropriate disposition notwithstanding any failure by juvenile's representatives to make specific proposals. *W. R. Fulwood* v. *W. Stone* (1967, 394 F. 2d 939, 129 U.S. App. D.C. 314).

Under provisions of Juvenile Court Act that when a child is removed from his own family, court shall secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given him by his parents, commitment to receiving home should be only a last resort where no suitable alternative exists. *Id.*

Opportunity to defend

Should jurisdiction be found to rest on the three alternative statutory sections, questions of fair notice and opportunity to defend would be presented. *In the Matter of J. G. Elmore* (1967, 382 F. 2d 125, 127 U.S. App. D.C. 176).

Substitute for bail

Provisions of Juvenile Court Act directing disposition of juveniles coming under jurisdiction of juvenile court are adequate substitute for bail. *W. R. Fulwood* v. *W. Stone* (1967, 394 F. 2d 939, 129 U.S. App. D.C. 314).

§ 16–2306. Service of summons and petition

(a) When a petition is filed, the Division shall set a time for initial appearance and shall direct the issuance of summonses. If delinquency or need of supervision is alleged, a summons, together with a copy of the petition, shall be served upon the child and upon his spouse (if any) and his parent, guardian, or other custodian. If neglect is alleged, the summons, together with a copy of the petition, shall be served on the parent, guardian, or other custodian of the child named in the petition. Where appropriate to the proper disposition of the case, the Division may direct service of summonses upon

other persons. A summons issued pursuant to this section shall advise the parties of the right to counsel as provided in section 16–2304.

(b) Upon request of the Corporation Counsel, the Division may endorse upon the summons an order directing the parent, guardian, or other custodian of the child to appear personally at the hearing and directing the person having physical custody or control of the child to bring the child to the hearing.

(c) If it appears, from information presented to the Division, that there are grounds to take the child into custody as provided in section 16–2309, or that the child may leave or be removed from the jurisdiction of the Superior Court or will not be brought to the hearing, notwithstanding service of the summons, the Division may endorse upon the summons an order that the officer serving the summons shall at once take the child into custody. If the child is taken into custody under this section, the provisions of sections 16–2309 to 16–2312 shall apply. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 527.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–2307, 16–2309, 16–2326.

§ 16–2307. Transfer for criminal prosecution

(a) Within seven days (excluding Sundays and legal holidays) of the filing of a delinquency petition, or later for good cause shown, and prior to a factfinding hearing on the petition, the Corporation Counsel, following consultation with the Director of Social Services, may file a motion, supported by a statement of facts, requesting transfer of the child for criminal prosecution, if—

(1) the child was fifteen or more years of age at the time of the conduct charged, and is alleged to have committed an act which would constitute a felony if committed by an adult;

(2) the child is sixteen or more years of age and is already under commitment to an agency or institution as a delinquent child; or

(3) a minor eighteen years of age or older is alleged to have committed a delinquent act prior to having become eighteen years of age.

(b) Following the filing of the motion by the Corporation Counsel, summonses shall be issued and served in conformity with the provisions of section 16–2306.

(c) When there are grounds to believe the child is substantially retarded or mentally ill, the Division shall stay the proceedings for the purpose of obtaining an examination. After examination, the Division shall proceed to a determination under subsection (d) unless it determines that the child is incompetent to participate in the proceedings, in which event it shall order the child committed to a mental hospital pursuant to section 16–2315 or section 927 of the Act of March 3, 1901 (D.C. Code, sec. 24–301(a)).

(d) Unless a commitment under subsection (c) of this section has intervened, the Divison shall conduct a hearing on each transfer motion to determine if there are reasonable prospects for rehabilitating the child before his majority. Such hearing shall be held within ten days (excluding Sundays and legal holidays) of the filing of the transfer motion. In any such hearing, the child who is the subject of the hearing shall not be required to establish that there are reasonable prospects for his rehabilitation prior to his majority. Unless the Division determines that there are reasonable prospects for rehabilitating the child before his majority, it shall order the transfer of the child for criminal prosecution and notify the United States attorney of such order. Accompanying the order of transfer shall be a statement of the reasons of the Division for ordering the transfer of the child. Included in the statement shall be the Division's findings with respect to each of the factors set forth in subsection (e) relating to the prospects for the rehabilitation of the child. This statement shall be available upon request to any court in which the transfer is challenged, but shall not be available to the trier of fact of the criminal charge prior to verdict.

(e) Evidence of the following factors shall be considered in determining whether they are reasonable prospects for rehabilitating a child prior to his majority:

(1) the child's age;

(2) the nature of the present offense and the extent and nature of the child's prior delinquency record;

(3) the child's mental condition;

(4) the nature of past treatment efforts and the nature of the child's response to past treatment efforts; and

(5) the techniques, facilities, and personnel for rehabilitation available to the Division and to the court that would have jurisdiction after transfer.

The rules of evidence at transfer hearings shall be the same as those that govern dispositional proceedings in delinquency cases, as set forth in section 16–2317. At a transfer hearing, only the propriety of eventual Division disposition shall be considered, and evidence bearing on probable cause or the likelihood that the child committed the act alleged shall not be admitted.

(f) Prior to a transfer hearing, a study and report, in writing, relevant to the factors in subsection (e), shall be made by the Director of Social Services. This report and all social records that are to be made available to the judge at the transfer hearing shall be made available to counsel for the child and to the Corporation Counsel at least three days prior to the hearing.

(g) A judge who conducts a hearing pursuant to this section shall not, over the objection of the child whose prospects for rehabilitation were at issue, participate in any subsequent factfinding proceedings relating to the offense.

(h) Transfer of a child for criminal prosecution terminates the jurisdiction of the Division over the child with respect to any subsequent delinquent act; except that jurisdiction of the Division over the child is restored if (1) the criminal prosecution is terminated other than by a plea of guilty, a verdict of guilty, or a verdict of not guilty by reason of insanity,

and (2) at the time of the termination of the criminal prosecution no indictment or information has been filed for criminal prosecution for an offense alleged to have been committed by the child subsequent to transfer. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 527.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–2302, 16–2313, 16–2315, 16–2316, 16–2327, 16–2332, 16–2333.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also §11–1553 in 1967 Edition]

Attorney's duties and functions

Child's lawyer should search for plan or range of plans which may persuade court that welfare of child and safety of community can be served without waiver, *D. V. Haziel* v. *United States* (1968, 404 F. 2d 1275, 131 U.S. App. D.C. 298).

Counsel desiring not to demand waiver hearing in juvenile court after consultation with client should indicate the consultation by letter to court. *Id.*

Construction

Theory of District of Columbia Juvenile Court Act is rooted in social welfare philosophy rather than the corpus juris. *M. A. Kent, Jr.* v. *United States* (1968, 401 F. 2d 408, 130 U.S. App. D.C. 343).

District of Columbia Juvenile Court is theoretically engaged in determining needs of child and of society rather than adjudicating criminal conduct, and its objectives are to provide measures of guidance and rehabilitation for the child and protection for society, not to fix criminal responsibility, guilt and punishment. *Id.*

Presumption of statutory framework is that juveniles are to be treated as juveniles and full investigation is required before waiver to adult court. All possible dispositions short of waiver must be explored by which welfare of child and best interests of district may be secured. *D. V. Haziel* v. *United States* (1968, 404 F. 2d 1275, 131 U.S. App. D.C. 298).

Court's discretion

Juvenile court has a substantial degree of discretion in determining whether to retain jurisdiction over a child, however such discretion must be exercised in accordance with the spirit of the District of Columbia Juvenile Court Act. *M. A. Kent, Jr.* v. *United States* (1968, 401 F. 2d 408, 130 U.S. App. D.C. 343).

Court's duty

Court in a waiver proceedings from juvenile court to district court has duty to utilize its facilities, personnel and expertise for proper determination of waiver issue. *D. V. Haziel* v. *United States* (1968, 404 F. 2d 1275, 131 U.S. App. D.C. 298).

Juvenile court has the duty to accompany waiver order with a statement of reasons or consideration sufficient to demonstrate full investigation and to show that question has received careful consideration and must set forth basis for order with sufficient specificity to permit meaningful review. *Id.*

Full investigation

Juvenile court's decision in waiver proceeding that facilities currently available to juvenile court offered no promise of rehabilitation, did not adequately show that required full investigation has been made. *D. V. Haziel* v. *United States* (1968, 404 F. 2d 1275, 131 U.S. App. D.C. 298).

Juvenile Court's duty on remand

If juvenile court on remand found that juvenile and mother did not participate fully and intelligently in decision not to demand waiver hearing in transfer from juvenile court to district court, it might hold further hearing to determine whether original waiver decision was appropriate. If, however, a hearing would be meaningless at such a late date, juvenile court had to miss indictment. *D. V. Haziel* v. *United States* (1968, 404 F. 2d 1275, 131 U.S. App. D.C. 298).

A requirement that a fully articulated examination of rehabilitative possibilities be held when waiver is contemplated from juvenile court to district court will be imposed only if juvenile's participation in original proceeding was defective. *Id.*

Right to waiver hearing

A juvenile's right to a waiver hearing by juvenile court so as to put trial in district court is a critically important right. *D. V. Haziel* v. *United States* (1968, 404 F. 2d 1275, 131 U.S. App. D.C. 298).

Both juvenile and his mother were entitled to insist that at least a hearing be held in connection with waiver from juvenile court to district court. *Id.*

Waiver

Where juvenile's counsel waived hearing without consultation with client, in connection with transfer from juvenile court to district court by letter and telephone conversation and decision of court did not show that it made full investigation before ordering waiver, waiver was improper. *D. V. Haziel* v. *United States* (1968, 404 F. 2d 1275, 131 U.S. App. D.C. 298).

Only after all rehabilitative possibilities have been canvassed, is it ever proper, to waive jurisdiction to district court from juvenile court. *Id.*

Waiver of jurisdiction in case of mentally ill person

Waiver provision of Juvenile Court Act is not excluded from the fundamental philosophy of parens patriae which underlies the statute. *M. A. Kent, Jr.* v. *United States* (1968, 401 F. 2d 408, 130 U.S. App. D.C. 343).

Social philosophy underlying Juvenile Court Act precluded waiver by juvenile court of juvenile afflicted with serious mental illness, since such waiver was not necessary for protection of society and was not conducive to juvenile's rehabilitation. *Id.*

Withdrawal of treatment as a juvenile

Treatment as a juvenile may be withdrawn pursuant to waiver proceedings only after full investigation. *D. V. Haziel* v. *United States* (1968, 404, F. 2d 1275, 131 U.S. App. D.C. 298).

§ 16–2308. Initial appearance

The initial appearance, before a judge assigned to the Division, of a child named in a delinquency or need of supervision petition or of the parent, guardian, or custodian of a child named in a neglect petition shall be at the time set forth in the summons, which shall be not later than five days after the petition has been filed. At the initial appearance, the child and his parent, guardian, or custodian shall be advised of the contents of the petition and of the right to counsel as provided in section 16–2304. At the initial appearance the child, or in neglect cases the parent, guardian, or custodian, may admit or deny the allegations in the petition, but it shall not be necessary at the initial appearance for the Corporation Counsel to establish probable cause to believe that the allegations in the petition are true. At the initial appearance, the judge may set the time for the fact-finding hearing or continue the matter until a later time. Failure to hold the initial appearance at the time specified shall not be grounds for dismissal of the petition. This section shall not apply in any case where, prior to or at the time of the initial appearance, a detention or shelter care hearing is required by section 16–2312. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 529.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–2309. Taking into custody

A child may be taken into custody—

(1) pursuant to order of the Division under section 16–2306 or 16–2311;

(2) by a law enforcement officer when he has reasonable grounds to believe that the child has committed a delinquent act;

(3) by a law enforcement officer when he has reasonable grounds to believe that the child is suffering from illness or injury or is in immediate danger from his surroundings, and that his removal from his surroundings is necessary; or

(4) by a law enforcement officer when he has reasonable grounds to believe that the child has run away from his parent, guardian, or other custodian. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 529.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–2306.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 16–2306 and other sections in title 16, chapter 23 in 1967 Edition]

Appropriate detention arrangement

Although receiving home was only place of detention provided by commissioners for those awaiting disposition in Juvenile Court, if a psychiatric condition was seriously endangering health or perhaps life of juvenile, there would be jurisdiction in Juvenile Court to make an appropriate detention arrangement. *E. Creek Jr.* v. *W. J. Stone* (1967, 379 F. 2d 106, 126 U.S. App. D.C. 329).

Construction

In this case, the court concluded that the Youth Division Officer, who has not participated in arrest of juvenile, has gathered "personal knowledge" of circumstances which make up the "case" concerning the juvenile while performing his functions, and he may verify petition to bring juvenile within jurisdiction of juvenile court. *In re M. C. Taylor* (D.C. App. 1970, 268 A. 2d 522).

Provisions of Juvenile Court Act that when child is removed from his own family, court shall secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given him by his parents are applicable prior to trial of juvenile as well as on final disposition. *W. R. Fulwood* v. *W. Stone* (1967, 394 F. 2d 939, 129 U.S. App. D.C. 314).

Custody, care and discipline

Under provisions of Juvenile Court Act that when child is removed from his own family, court shall secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given him by his parents, when removal from family is deemed necessary juvenile is not automatically to be committeed to the receiving home; the juvenile court has duty to fashion appropriate disposition notwithstanding any failure by juvenile's representatives to make specific proposals. *W. R. Fulwood* v. *W. Stone* (1967, 394 F. 2d 939, 129 U.S. App. D.C. 314).

Under provisions of Juvenile Court Act that when a child is removed from his own family, court shall secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given him by his parents, commitment to receiving home should be only a last resort where no suitable alternative exists. *Id.*

Pretrial inquiry

Record disclosing that juvenile court judge after announcing that he was going to place juvenile in receiving home pending trial on charges of robbery and assault refused request of juvenile's attorney that juvenile be released on "some sort of bail" did not disclose that appropriate inquiry concerning pretrial custody had been made by juvenile court in order to secure for juvenile the custody, care and discipline as nearly as possible equivalent to that which should have been given him by his parents. *W. R. Fulwood* v. *W. Stone* (1967, 394 F. 2d 939, 129 U.S. App. D.C. 314).

§ 16–2310. Criteria for detaining children

(a) A child shall not be placed in detention prior to a factfinding hearing or a dispositional hearing unless he is alleged to be delinquent or in need of supervision and unless it appears from available information that detention is required—

(1) to protect the person or property of others or of the child, or

(2) to secure the child's presence at the next court hearing.

(b) A child shall not be placed in shelter care prior to a factfinding hearing or a dispositional hearing unless it appears from available information that shelter care is required—

(1) to protect the person of the child, or

(2) because the child has no parent, guardian, custodian, or other person or agency able to provide supervision and care for him, and the child appears unable to care for himself.

(c) The criteria for detention and shelter care provided in this section, as implemented by rules of the Superior Court, shall govern the decisions of all persons responsible for determining whether detention or shelter care is warranted prior to the factfinding hearing. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 529.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–2311, 16–2312.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 16–2316 and other sections in title 16, chapter 23 in 1967 edition]

Attorney's duties and functions

Child's lawyer should search for plan or range of plans which may persuade court that welfare of child and safety of community can be served without waiver. *D. V. Haziel* v. *United States* (1968, 404 F. 2d 1275, 131 U.S. App. D.C. 298).

Counsel desiring not to demand waiver hearing in juvenile court after consultation with client should indicate the consultation by letter to court. *Id.*

Congressional objective

Congressional objective in passing Juvenile Court Act providing that when child is removed from his own family, court shall secure for him custody, care and discipline as nearly possible equivalent to that which should have been given him by his parents, comprehends psychiatric care in appropriate cases. *E. Creek Jr.* v. *W. J. Stone* (1967, 379 F. 2d 106, 126 U.S. App. D.C. 329).

Purpose stated in Juvenile Court Act to give juvenile in custody the care, as nearly as possible equivalent to that which should have been given by his parents, establishes not only an important policy objective, but, in an appropriate case, a legal right to a custody that is not inconsistent with the parens patriae premise of the law. *Id.*

Congressional purpose in passing Juvenile Court Act was to establish a professionally staffed, specialized court, equipped with broad powers to implement rehabilitative purposes of Act, and Juvenile Court is vested with broad range of discretion in light of its professional expertise. *Id.*

Construction

Presumption of statutory framework is that juveniles are to be treated as juveniles and full investigation is

required before waiver to adult court. All possible dispositions short of waiver must be explored by which welfare of child and best interests of district may be secured. *D. V. Haziel* v. *United States* (1968, 404 F. 2d 1275, 131 U.S. App. D.C. 298).

Juvenile court legislation rests, in various aspects, on premise that state is acting as parens patriae, that it is undertaking in effect to provide for child the kind of environment he should have been receiving at home, and that it is because of this that appropriate officials, while subject to requirement that juvenile proceedings must not be arbitrary or unfair, are permitted to take and retain custody of child without affording him all various procedural rights available to adults suspected of crime. *E. Creek, Jr.* v. *W. J. Stone* (1967, 379 F. 2d 106, 126 U.S. App. D.C. 329).

Court's duty

Court in a waiver proceedings from juvenile court to district court has duty to utilize its facilities, personnel and expertise for proper determination of waiver issue. *D. V. Haziel* v. *United States* (1968, 404 F. 2d 1275, 131 U.S. App. D.C. 298).

Juvenile court has duty to accompany waiver order with a statement of reasons or considerations sufficient to demonstrate full investigation and to show that question has received careful consideration and must set forth basis for order with sufficient specificity to permit meaningful review. *Id.*

Custody, care and discipline

Under provisions of Juvenile Court Act that when child is removed from his own family, court shall secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given him by his parents, when removal from family is deemed necessary, juvenile is not automatically to be committed to the receiving home; the juvenile court has duty to fashion appropriate disposition notwithstanding any failure by juvenile's representatives to make specific proposals. *W. R. Fulwood* v. *W. Stone* (1967, 394 F. 2d 939, 129 U.S. App. D.C. 314).

Under provisions of Juvenile Court Act that when a child is removed from his own family, court shall secure for him custody, care and discipline as nearly as possible equivalent to that which should have been given him by his parents, commitment to receiving home should be only a last resort where no suitable alternative exists. *Id.*

Full investigation

Juvenile court's decision in waiver proceeding that facilities currently available to juvenile court offered no promise of rehabilitation did not adequately show that required full investigation had been made. *D. V. Hazel* v. *United States* (1968, 404 F. 2d 1275, 131 U.S. App. D.C. 298).

Jurisdiction

Juvenile Court has jurisdiction to enter order concerning child in its custody pendente lite, pending the disposition on the merits. *E. Creek Jr.* v. *W. J. Stone* (1967, 379 F. 2d 106, 126, U.S. App. D.C. 329).

Jurisdiction of the Juvenile Court is comprehensive and is to be taken as attaching at the earliest stage necessary to implement the broad rehabilitative purposes of the law. *Id.*

Substitute for bail

Provisions of Juvenile Court Act directing disposition of juveniles coming under jurisdiction of juvenile court are adequate substitute for bail. *W. R. Fulwood* v. *W. Stone* (1967, 394 F. 2d 939, 129 U.S. App. D.C. 314).

Treatment of juvenile in "interim" custody

Where claim is presented to Juvenile Court by juvenile in custody alleging a need for treatment which is not being furnished, the fact that the custody is "interim" as opposed to "final" does not end the matter, and Juvenile Court, when presented with a substantial complaint, should make appropriate inquiry to insure that statutory criteria, as applied to that particular juvenile, are being met, and the depth and scope of such inquiry will vary with the case. *E. Creek Jr.* v. *W. J. Stone* (1967, 379 F. 2d 106, 126 U.S. App. D.C. 329).

Waiver

Where juvenile's counsel waived hearing without consultation with client in connection with transfer from juvenile court to district court by letter and telephone conversation and decision of court did not show that it made full investigation before ordering waiver, waiver was improper. *D. V. Haziel* v. *United States* (1968, 404 F. 2d 1275, 131 U.S. App. D.C. 298).

Only after all rehabilitative possibilities have been canvassed is it ever proper to waive jurisdiction to district court from juvenile court. *Id.*

Waiver of jurisdiction in case of mentally ill person

Waiver provision of Juvenile Court Act is not excluded from the fundamental philosophy of parens patriae which underlies the statute. *M. A. Kent, Jr.* v. *United States* (1968, 401 F. 2d 408, 130 U.S. App. D.C. 343).

Social philosophy underlying Juvenile Court Act precluded waiver by juvenile court of juvenile afflicted with serious mental illness, since such waiver was not necessary for protection of society and was not conducive to juvenile's rehabilitation. *Id.*

Withdrawal of treatment as a juvenile

Treatment as a juvenile may be withdrawn pursuant to waiver proceedings only after full investigation. *D. V. Haziel* v. *United States* (1968, 404 F. 2d 1275, 131 U.S. App. D.C. 298).

§ 16–2311. Release or delivery to Family Division

(a) A person taking a child into custody shall with all reasonable speed—

(1) release the child to his parent, guardian, or custodian upon a promise to bring the child before the Division when requested by the Division, unless the child's placement in detention or shelter care appears required as provided in section 16–2310;

(2) bring the child before the Director of Social Services; or

(3) bring the child to a medical facility if the child appears to require prompt treatment or to require prompt diagnosis for medical or evidentiary purposes.

Any person taking a child into custody shall give prompt notice to the Corporation Counsel and to the parent, guardian, or custodian (if known) together with the reasons for custody.

(b) When a child is brought before the Director of Social Services, the Director shall in all cases review the need for detention or shelter care prior to the admission of the child to the place of detention or shelter care. The child shall be released to his parent, guardian, or custodian unless the Director of Social Services finds that detention or shelter care is required under section 16–2310. If the child is not released, the Director of Social Services shall advise him of the right to counsel as provided in section 16–2304.

(c) If a parent, guardian, or custodian fails, when requested, to bring the child to the Division as provided in subsection (a)(1), the Division may issue a warrant directing that the child be taken into custody and brought before the Division. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 530.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–2309, 16–2312.

§ 16–2312. Detention or shelter care hearing; intermediate disposition

(a) When a child is not released as provided in section 16–2311—

(1) a detention or shelter care hearing shall be commenced not later than the next day (excluding Sundays) after the child has been taken into custody or transferred from another court as provided by section 16–2302; and

(2) a petition shall be filed at or prior to the detention or shelter care hearing.

(b) Prompt notice of the detention or shelter care hearing shall be given, if delinquency or need of supervision is alleged, to the child, and to his spouse (if any), parent, guardian, or custodian, if he can be found, or, if neglect is alleged, to the child, and to the parent, guardian, or custodian named in the petition if he can be found. Counsel for the child, and in neglect cases counsel for the parent, guardian, or custodian, shall be entitled to a copy of the petition prior to the hearing.

(c) At the comencement of the hearing the judge shall advise the parties of the right to counsel, as provided in section 16–2304, and shall appoint counsel if required. He shall also inform them of the contents of the petition and shall afford the child, or in a neglect case, the parent, guardian, or custodian, an opportunity to admit or deny the allegations in the petition. He shall then hear from the Corporation Counsel to determine whether the child should be placed or continued in detention or shelter care under the criteria in section 16–2310. The child and his parent, guardian, or custodian shall have a right to be heard in their own behalf.

(d) (1) At the conclusion of the hearing, the judge shall—

(A) order detention or shelter care, setting forth in writing his reasons therefor, if he finds that the child's detention or shelter care is required under the criteria in section 16–2310; or

(B) order the child released if he finds that the child's detention or shelter care is not required under such criteria.

(2) If a child is ordered released under paragraph (1) (B) of this subsection, the judge may impose one or more of the following conditions:

(A) Placement of the child in the custody of a parent, guardian, or custodian or under supervision of a person or organization agreeing to supervise him.

(B) Placement of restrictions on the child's travel, activities, or place of abode during the period of release.

(C) Any other condition reasonably necessary to assure the appearance of the child at a factfinding hearing or his protection from harm, including a requirement that the child return to the physical custody of the parent, guardian, or custodian after specified hours.

(e) When a judge finds that a child's detention or shelter care is required under the criteria of section 16–2310, he shall then hear evidence presented by the Corporation Counsel to determine whether there is probable cause to believe the allegations in the petition are true. The child, his parent, guardian or custodian may present evidence on the issues and be heard in their own behalf.

(f) When a judge finds there is probable cause to believe the allegations in the petition are true, he shall order the child to be placed or continued in detention or shelter care and set forth his reasons. When a judge finds that there is not probable cause to believe the allegations in the petition are true, he shall order the child to be released.

(g) The Division at a detention or shelter care hearing may not postpone the determination of whether detention or shelter care is required. For good cause shown, however, the Division may grant a continuance of any other part of the hearing (including the filing of a petition) for a period not to exceed five days.

(h) On motion by or on behalf of the child, a child in custody shall be released from custody if his detention or shelter care hearing is not commenced within the time set herein.

(i) If a child is not released after his detention or shelter care hearing and the parent, guardian or custodian did not receive notice thereof, the Division may, in the interest of justice, conduct a new hearing in accordance with rules prescribed by the Superior Court.

(j) Upon objection of the child or his parent, guardian or custodian, a judge who conducted a detention or shelter care hearing shall not conduct a factfinding hearing on the petition. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 530.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–2305, 16–2306, 16–2308, 16–2327.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 11–1584 in 1967 Edition]

Jurisdiction

Juvenile Court has jurisdiction to enter order concerning child in its custody pendente lite, pending the disposition on the merits. *E. Creek, Jr.* v. *W. J. Stone* (1967, 379 F. 2d 106, 126 U.S. App. D.C. 329).

Jurisdiction of the Juvenile Court is comprehensive and is to be taken as attaching at the earliest stage necessary to implement the broad rehabilitative purposes of the law. *Id.*

§ 16–2313. Place of detention or shelter

(a) A child who is alleged to be neglected and who is in custody may be placed at any time prior to disposition, only in—

(1) a foster home;

(2) a group home, youth shelter, or other appropriate home for nondelinquent children; or

(3) another facility for shelter care designated by the Division, including an appropriate facility operated by the District of Columbia.

No child alleged to be neglected may be placed in a facility described in paragraph (3) of subsection (b) of this section.

(b) A child who is alleged to be in need of supervision or (except as provided in subsection (d) or

(e)) is alleged to be delinquent and who is in custody may be detained at any time prior to disposition only in—

(1) a foster home;

(2) a group home, youth shelter, or other appropriate home for allegedly delinquent children; or

(3) a detention home for allegedly delinquent children or children alleged to be in need of supervision, designated by the Division, including an appropriate facility operated by the District of Columbia.

Unless the Division shall by order so authorize, no child may be detained in a facility described in paragraph (3) if it would result in his commingling with children who have been adjudicated delinquent and committed by order of the Division.

(c) A child in detention or shelter care may be temporarily transferred to a medical facility for physical care and may, on order of the Division, be temporarily transferred to a facility for mental examination or treatment.

(d) Except as provided in subsection (e), no child under eighteen years of age may be detained in a jail or other facility for the detention of adults, unless transferred as provided in section 16–2307. The appropriate official of a jail or other facility for the detention of adults shall inform the Superior Court immediately when a child under the age of eighteen years is received there (other than by transfer) and shall (1) deliver him to the Director of Social Services upon request, or (2) transfer him to a detention facility described in subsection (b)(3).

(e) A child sixteen years of age or older who is alleged to be delinquent and who is in detention, whose conduct constitutes a menace to other children, and who cannot be controlled, may on order of the Division be transferred to a place of detention for adults, but shall be kept separate from adults. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 531.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–2327.

§ 16–2314. Consent decree

(a) At any time after the filing of a delinquency or need of supervision petition and prior to adjudication at a factfinding hearing, the Division may, on motion of the Corporation Counsel or counsel for the child, suspend the proceedings and continue the child under supervision, without commitment, under terms and conditions established by rules of the Superior Court. Such a consent decree shall not be entered unless the child is represented by counsel and has been informed of the consequences of the decree; nor shall it be entered over the objection of the child or of the Corporation Counsel.

(b) A consent decree shall remain in force for six months unless the child is sooner discharged by the Director of Social Services. Upon application of the Director of Social Services or an agency supervising the child made prior to the expiration of the decree, a consent decree may, after notice and hearing, be extended for not more than six additional months by order of the Division.

(c) If prior to the expiration of the decree or discharge by the Director of Social Services, the child fails to fulfill the express conditions of the decree or a new delinquency or need of supervision petition is filed concerning the child, the original petition under which the decree was filed may, in the discretion of the Corporation Counsel following consultation with the Director of Social Services, be reinstated. The child shall thereafter be held accountable on the original petition as if the consent decree had never been entered.

(d) If a child completes the period of continuance under supervision in accordance with the consent decree or is sooner discharged by the Director of Social Services, the Division shall dismiss the original petition. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 532.)

§ 16–2315. Physical and mental examinations

(a) At any time following the filing of a petition, on motion of the Corporation Counsel or counsel for the child, or on its own motion, the Division may order a child to be examined to aid in determining his physical or mental condition.

(b) Wherever possible examinations shall be conducted on an outpatient basis, but the Division may, if it deems necessary, commit the child to a suitable medical facility or institution for the purpose of examination. Commitment for examination shall be for a period of not more than forty-five days; except that the Division may, for good cause shown, grant extensions of the commitment which may not exceed forty-five days in the aggregate.

(c)(1) If as a result of mental examination the Division determines that a child alleged to be delinquent is incompetent to participate in proceedings under the petition by reason of mental illness or substantial retardation, it shall, except as provided in subsection (2), suspend further proceedings and the Corporation Counsel shall initiate commitment proceedings pursuant to chapter 5 or 11 of title 21.

(2) If a motion for transfer for criminal prosecution has been filed pursuant to section 16–2307 and the Division determines that a child alleged to be delinquent is incompetent to participate in the transfer proceedings by reason of mental illness, it shall suspend further proceedings and order the child confined to a suitable hospital or facility for the mentally ill until his competency is restored. If prior to the time the child reaches the age of 21 it appears that he will not regain his competency to participate in the proceedings, the Corporation Counsel shall initiate commitment proceedings pursuant to chapter 5 of title 21.

(3) If, as a result of mental examination, the Division determines that a child alleged to be in need of supervision is incompetent to participate in proceedings under the petition by reason of mental illness or substantial retardation, it shall suspend further proceedings. If proceedings are suspended, the Corporation Counsel may initiate commitment proceedings pursuant to chapter 5 or 11 of title 21.

(d) The results of an examination under this section shall be admissible in a transfer hearing pursuant to section 16–2307, in a dispositional hearing under this subchapter, or in a commitment proceeding under chapter 5 or 11 of title 21. The results of examination may be admitted into evidence at a factfinding hearing to aid the Division in determining a material allegation of the petition relating to the child's mental or physical condition, but not for the purpose of establishing a defense of insanity.

(e) Following an adjudication at a factfinding hearing that a child is neglected, the Division may order the mental or physical examination of the parent, guardian, or custodian of the child whose ability to care for the child is at issue. The results of the examination are admissible at a dispositional hearing on the petition alleging neglect. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 533.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–2307, 16–2321.

§ 16–2316. Conduct of hearings; evidence

(a) The Division shall, without a jury, hear and adjudicate cases involving delinquency, need of supervision, or neglect. The Corporation Counsel shall present evidence in support of all petitions arising under this subchapter and otherwise represent the District of Columbia in all proceedings.

(b) Evidence which is competent, material, and relevant shall be admissible at factfinding hearings. Evidence which is material and relevant shall be admissible at detention hearings, transfer hearings under section 16–2307, and dispositional hearings.

(c) All hearings and proceedings under this subchapter shall be recorded by appropriate means. Except in hearings to declare a person in contempt of court, the general public shall be excluded from hearings arising under this subchapter. Only persons necessary to the proceedings shall be admitted, but the Division may, pursuant to rule of the Superior Court, admit such other persons (including members of the press) as have a proper interest in the case or the work of the court on condition that they refrain from divulging information identifying the child or members of his family involved in the proceedings.

(d) If the Division finds that it is in the best interest of the child, it may temporarily exclude him from any proceeding except a factfinding hearing. If the petition alleges neglect, the child may also be temporarily excluded from a factfinding hearing. In any case, counsel for the child may not be excluded. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 533.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 16–2307, and other sections in title 16, chapter 23 in 1967 Edition]

Court's duty

Trial judge has duty under Juvenile Court Act, where parens patriae principle justifies some tempering of adversarial nature of process, greater than in adversary criminal trial to insure that child receives full benefits promised by statutory scheme. *D. V. Haziel* v. *United States* (1968, 404 F. 2d 1275, 131 U.S. App. D.C. 298).

Full investigation

Juvenile court is armed with broad statutory powers to conduct an appropriate inquiry to fashion dispositional decree tailored to meet peculiar needs of particular child when it is presented with substantial complaint concerning commitment. *In the Matter of J. G. Elmore* (1967, 382 F. 2d 125, 127 U.S. App. D.C. 176).

Substantial complaint

Where there is an explicit finding that infant needed psychological or psychiatric care to meet his needs and there was claim that infant was receiving no treatment, there was "substantial complaint" calling for appropriate inquiry by juvenile court. *In the Matter of J. G. Elmore* (1967, 382 F. 2d 125, 127 U.S. App. D.C. 176).

§ 16–2317. Hearings, findings; dismissal

(a) Except as otherwise provided by statute or court rule, all motions shall be heard at the time of the factfinding hearing.

(b) After a factfinding hearing on the allegations in the petition, the Division shall make and file written findings in all cases as to the truth of the allegations, and in neglect cases, he shall also make and file written findings as to whether the child is neglected. If the Division finds that—

(1) in the case of a delinquency petition, that the allegations have not been established by proof beyond a reasonable doubt, or

(2) in the case of a need of supervision or neglect petition, that the allegations have not been established by the preponderance of the evidence,

the Division shall dismiss the petition and order the child released from any detention or shelter care or other restriction previously ordered. If the proceedings are not terminated after the factfinding hearing, the Division shall review the need for detention or shelter care of the child.

(c) If the Division finds in a factfinding hearing that—

(1) the allegations in a delinquency petition have been established by proof beyond a reasonable doubt, or

(2) the allegations in a need of supervision or neglect petition have been established by the preponderance of the evidence,

the Division, after giving the notice required by subsection (e) of this section, shall proceed to hold a dispositional hearing. The Division may postpone a dispositional hearing to await the predisposition study and report of the Director of Social Services required by section 16–2319. In the absence of evidence to the contrary, a finding of the commission of an act which would constitute a criminal offense if committed by an adult is sufficient to sustain a finding of need for care or rehabilitation in delinquency and need of supervision cases.

(d) If the Division finds that the child is not in need of care or rehabilitation it shall terminate the proceedings and discharge the child from detention, shelter care, or other restriction previously ordered.

(e) The Division shall give prompt notice of any dispositional hearing as follows:

(1) In delinquency and need of supervision cases, to the child, his spouse (if any), and his parent, guardian, or custodian.

(2) In neglect cases, to the child and to the parent, guardian, or custodian named in the petition if he can be found.

(July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 534.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–2307, 16–2319, 16–2320.

§ 16–2318. Order of adjudication noncriminal

A consent decree, order of adjudication, or order of disposition in a proceeding under this subchapter is not a conviction of crime and does not impose any civil disability ordinarily resulting from a conviction, nor does it operate to disqualify a child in any future civil service examination, appointment or application for public service in either the Government of the United States or of the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 534.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–2319. Predisposition study and report

After a motion for transfer has been filed, or after the Division has made findings pursuant to subsection (c) of section 16–2317 sustaining the allegations of a petition and, in neglect cases, the conclusion that the child is neglected, the Division shall direct that a predisposition study and report to the Division be made by the Director of Social Services or a qualified agency designated by the Division concerning the child, his family, his environment, and other matters relevant to the need for treatment or disposition of the case. Except in connection with a hearing on a transfer motion, no predisposition study or report shall be furnished to or considered by the Division prior to completion of the factfinding hearing. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 535.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–2317.

§ 16–2320. Disposition of child who is neglected, delinquent, or in need of supervision

(a) If a child is found to be neglected, the Division may order any of the following dispositions which will be in the best interest of the child:

(1) Permit the child to remain with his parent, guardian, or other custodian, subject to such conditions and limitations as the Division may prescribe, including but not limited to medical, psychiatric, or other treatment at an appropriate facility on an out-patient basis.

(2) Place the child under protective supervision.

(3) Transfer legal custody to any of the following—

(A) a public agency responsible for the care of neglected children;

(B) a child placing agency or other private organization or facility which is licensed or otherwise authorized by law and is designated by the Commissioner of the District of Columbia to receive and provide care for the child; or

(C) a relative or other individual who is found by the Division to be qualified to receive and care for the child.

(4) Commitment of the child for medical, psychiatric, or other treatment at an appropriate facility on an in-patient basis if, at the dispositional hearing provided for in section 16–2317, the Division finds that confinement is necessary to the treatment of the child. A child for whom medical, psychiatric, or other treatment is ordered may petition the Division for review of the order thirty days after treatment under the order has commenced, and, if, after a hearing for the purpose of such review, the original order is affirmed, the child may petition for review thereafter every six months.

(5) Make such other disposition as may be provided by law and as the Division deems to be in the best interests of the child and the community.

(b) Unless a child found neglected is also found to be delinquent, he shall not be committed to, or confined in, an institution for delinquent children.

(c) If a child is found to be delinquent or in need of supervision, the Division may order any of the following dispositions for his supervision, care, and rehabilitation:

(1) Any disposition authorized by subsection (a) (other than paragraph (3)(A) thereof).

(2) Transfer of legal custody to a public agency for the care of delinquent children.

(3) Probation under such conditions and limitations as the Division may prescribe.

(d) No child found in need of supervision, unless also found delinquent, shall be committed to or placed in an institution or facility for delinquent children; except that if such child has previously been found in need of supervision and the Division, after hearing, so finds, the Division may specify that such child be committed to or placed in an institution or facility for delinquent children.

(e) No child who is found to be delinquent, in need of supervision, or neglected shall be committed to a penal or correctional institution for adult offenders. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 535.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–2326.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 16–2308 and other sections in title 16, chapter 23 in 1967 edition]

Full investigation

Juvenile court is armed with broad statutory powers to conduct an appropriate inquiry to fashion dispositional decree tailored to meet peculiar needs of particular child when it is presented with substantial complaint concerning commitment. *In the Matter of J. G. Elmore* (1967, 382 F. 2d 125, 127 U.S. App. D.C. 176).

Substantial complaint

Where there is an explicit finding that infant needed psychological or psychiatric care to meet his needs and there was claim that infant was receiving no treatment, there was "substantial complaint" calling for appropriate inquiry. *In the Matter of J. G. Elmore* (1967, 382 F. 2d 125, 127 U.S. App. D.C. 176).

§ 16–2321. Disposition of mentally ill or substantially retarded child

(a) If no previous examination has been made under section 16–2315 and the Division, after a fact-

finding but before a dispositional hearing, has reason to believe that a child is mentally ill or substantially retarded, it may order an examination as provided in section 16–2315.

(b) If as a result of the examination the child is found to be mentally ill or substantially retarded, the Division may, in lieu of other disposition, direct the appropriate authority to initiate commitment proceedings under chapter 5 or 11 of title 21. The Division may order the child detained in suitable facilities pending commitment proceedings.

(c) If the examination does not indicate that commitment proceedings should be initiated or if the proceedings do not result in commitment, the Division shall proceed to disposition pursuant to this subchapter. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 536.)

§ 16–2322. Limitation of time on dispositional orders

(a)(1) A dispositional order vesting legal custody of a child in a department, agency, or institution shall remain in force for an indeterminate period not exceeding two years. Unless the order specifies that release is permitted only by order of the Division, the department, agency, or institution may release the child at any time that it appears the purpose of the disposition order has been achieved.

(2) An order vesting legal custody of a child in an individual other than his parent shall remain in force for two years unless sooner terminated by order of the Division.

(3) An order of probation or a protective supervision order shall remain in force for a period not exceeding one year from the date entered, but the Director of Social Services or the agency providing supervision may terminate supervision at any time that it appears the purpose of the order has been achieved.

(b) A dispositional order vesting legal custody of a child in an agency or institution may be extended for additional periods of one year, upon motion of the department, agency, or institution to which the child was committed, if, after notice and hearing, the Division finds that—

(1) in the case of a neglected child, the extension is necessary to safeguard his welfare; or

(2) in the case of a child adjudicated delinquent or in need of supervision, the extension is necessary for his rehabilitation or the protection of the public interest.

(c) Any other dispositional order may be extended for additional periods of one year, upon motion of the Director of Social Services, if, after notice and hearing, the Division finds that extension is necessary to protect the interest of the child.

(d) A release or termination of an order prior to expiration of the order pursuant to subsection (a)(1) or (3), shall promptly be reported in writing to the Division.

(e) Upon termination of a dispositional order a child shall be notified in writing of its termination. Upon termination of an order or release a child shall be notified, in accordance with rules of the Superior Court, of his right to move for the sealing of his records as provided in section 16–2334.

(f) Unless sooner terminated, all orders of the Division under this subchapter in force with respect to a child terminate when he reaches twenty-one years of age. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 537.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–2323. Modification, termination of orders

(a) An order of the Division under this subchapter shall be set aside if—

(1) it was obtained by fraud or mistake sufficient to set aside an order or judgment in a civil action;

(2) the Division lacked jurisdiction; or

(3) newly discovered evidence so requires.

(b) A child who has been committed under this subchapter to the custody of an institution, agency, or person, or the parent or guardian of the child, may file a motion for modification or termination of the order of commitment on the ground that the child no longer is in need of commitment, if the child or his parent or guardian has applied to the institution or agency for release and the application was denied or not acted upon within a reasonable time.

(c) The Director of Social Services shall conduct a preliminary review of motions filed under subsection (b) and shall prepare a report to the Division on the allegations contained therein. The Division may dismiss the motion if it concludes from the report that it is without substance. Otherwise, the Division, after notice, shall hear and determine the issues raised by the motion and deny the motion, or enter an appropriate order modifying or terminating the order of commitment, if it finds such action necessary to safeguard the welfare of the child or the interest of the public.

(d) A motion may be filed under subsection (b) only once every six months. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 537.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 16–2309 and other sections in title 16, chapter 23 in 1967 edition]

Change in law after commitment

Where interpretation of Juvenile Court Act, by appellate court which imposed duty on juvenile court to make appropriate inquiry with aim of providing individualized care and treatment of infants, was made subsequent to decision committing infant to custody of department of public welfare, juvenile court should have opportunity to conduct full hearing and make its determination in light of new decision. *In the Matter of J. G. Elmore* (1967, 382 F. 2d 125, 127 U.S. App. D.C. 176).

§ 16–2324. Support of committed child

Whenever legal custody of a child is vested in any agency or individual other than the child's parent, after due notice to the parent or other persons legally obligated to care for and support the child and after hearing, the Division may, at the dispositional hearing or thereafter, order and decree that the parent or other legally obligated person shall pay, in such manner as the Division may direct, a reasonable sum that will cover in whole or in part the support and treatment of the child after the

decree is entered. If the parent or other legally obligated person wilfully fails or refuses to pay such sum, the Division may proceed against him for contempt, or the order may be filed and shall have the effect of a civil judgment. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 537.)

§ 16–2325. Court costs and expenses

If, at the dispositional hearing or thereafter, the Division finds, after due notice and hearing, that the parent or other person legally obligated to care for and support a child subject to proceedings under this subchapter is financially able to pay, the Division may order him to pay all of or part of the costs of—

(1) physical and mental examinations and treatment of the child ordered by the Division; and

(2) reasonable compensation for services and related expenses of counsel appointed by the court to represent the child, or, in neglect cases, himself.

Payment shall be made as prescribed by rules of the Superior Court. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 537.)

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 11–1586 in 1967 Edition]

Evidence—Admissibility

Testimony given in administrative suspension hearing of arresting officer that he and juvenile officer were responsible for seizing juvenile driver's permit and turning it over to Department of Motor Vehicles along with facts relative to the incident, was not product of a disclosure or use of information concerning a juvenile before the court, directly or indirectly derived from records, papers, files, or communications of the court, or acquired in the course of official duties. *K. P. Murphy, a minor etc.* v. *W. D. Heath, Director, etc.* (D.C. App. 1969, 256 A. 2d 421).

Testimony of arresting officer, in administrative suspension hearing indicating, in response to permit control officer's question, that driver refused to take urine test was not of sufficient magnitude to fatally infect the fairness of the hearing in view of testimony as to odoriferous condition of driver's automobile and driver, his unsteady condition, and his unchallenged admission that he had earlier consumed substantial quality of beer. *Id.*

§ 16–2326. Probation revocation; disposition

(a) If a child on probation incident to an adjudication of delinquency or need of supervision violates any term of his probation he may be proceeded against in a probation revocation hearing.

(b) A proceeding to revoke probation shall be commenced by the filing of a revocation petition by the Corporation Counsel. The petition to revoke probation shall be in such form as may be prescribed by rule of the Superior Court and shall be served together with a summons in the manner provided in section 16–2306.

(c) Probation revocation proceedings shall be heard without a jury and shall require establishment of the facts alleged by a preponderance of the evidence. As nearly as may be appropriate, probation revocation proceedings shall conform to the procedures established by this subchapter for delinquency and need of supervision cases.

(d) If a child is found to have violated the terms of his probation, the Division may modify the terms and conditions of the probation order, extend the period of probation, or enter any other order of disposition specified in section 16–2320 for a delinquent child. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 538.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–2327. Interlocutory appeals

(a) A child who has been ordered transferred for criminal prosecution under section 16–2307 or detained or placed in shelter care or subjected to conditions of release under section 16–2312, may, within two days of the date of entry of the Division's order, file a notice of interlocutory appeal.

(b) The District of Columbia Court of Appeals shall (1) hear argument on an appeal under subsection (a) on or before the third day (excluding Sundays) after the filing of notice under that subsection, (2) dispense with any requirement of written briefs other than the supporting materials previously submitted to the Division, and (3) render its decision on or before the next day following argument on appeal. The court may in rendering its decision dispense with the issuance of a written opinion.

(c) In cases involving transfer for criminal prosecution, the pendency of an interlocutory appeal shall act to stay criminal proceedings. Until the time for filing an interlocutory appeal has lapsed, or if an appeal is filed until its completion, no child who has been ordered transferred for criminal prosecution shall be removed to a place of adult detention, except as provided in section 16–2313, or otherwise treated as an adult.

(d) The decision of the District of Columbia Court of Appeals shall be final. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 538.)

§ 16–2328. Finality of judgments; appeals; transcripts

(a) Except as otherwise expressly provided by law, in all hearings and cases tried before the Division pursuant to this subchapter, the judgment of the Division is final.

(b) In all appeals from decisions of the Division with respect to a child alleged to be neglected, delinquent, or in need of supervision, the child shall be identified only by initials in all transcripts, briefs, and other papers filed, and all necessary steps, as prescribed by rule of the District of Columbia Court of Appeals, shall be taken to protect the identity of the child.

(c) Upon the filing of a motion and supporting affidavit stating that he is financially unable to purchase a transcript, a party who has filed notice of appeal or of interlocutory appeal shall be furnished, at no cost or at such part of cost as he is able to pay, so much of the transcript as is necessary adequately to prepare and support the appeal.

(d) An appeal does not operate to stay the order, judgment, or decree appealed from, but on application and hearing whenever the case is properly before the appellate court, that court may order otherwise if suitable provision is made for the care and custody of the child. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 538.)

§ 16–2329. Time computation

(a) In all proceedings in the Division, time limitations shall be reasonably construed by the Division for the protection of the community and of the child.

(b) The following periods shall be excluded in computing the time limits established for proceedings under this subchapter:

(1) The period of delay resulting from a continuance granted, upon grounds constituting unusual circumstances, at the request or with the consent, in any case, of the child or his counsel, or, in neglect cases, also of the parent, guardian, or custodian.

(2) The period of delay resulting from other proceedings concerning the child, including but not limited to an examination or hearing on mental health or retardation and a hearing on a transfer motion.

(3) The period of delay resulting from a continuance granted at the request of the Corporation Counsel if the continuance is granted because of the unavailability of evidence material to the case, when the Corporation Counsel has exercised due diligence to obtain such evidence and there are reasonable grounds to believe that such evidence will be available at the later date; or if the continuance is granted to allow the Corporation Counsel additional time to prepare his case and additional time is required due to the exceptional circumstances of the case.

(4) The period of delay resulting from the imposition of a consent decree.

(5) The period of delay resulting from the absence or unavailability of the child.

(6) A reasonable period of delay when the child is joined for a hearing with another child as to whom the time for a hearing has not run and there is good cause for not hearing the case separately. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 539.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–2330. Juvenile case records; confidentiality; inspection and disclosure

(a) As used in this section, the term "juvenile case records" refers to the following records of a case over which the Division has jurisdiction under section 11–1101(13):

(1) Notices filed with the court by an arresting officer pursuant to this subchapter.

(2) The docket of the court and entries therein.

(3) Complaints, petitions, and other legal papers filed in the case.

(4) Transcripts of proceedings before the court.

(5) Findings, verdicts, judgments, orders, and decrees.

(6) Other writings filed in proceedings before the court, other than social records.

(b) Juvenile case records shall be kept confidential and shall not be open to inspection; but, subject to the limitations of subsection (c), the inspection of those records shall be permitted to—

(1) judges and professional staff of the Superior Court;

(2) the Corporation Counsel and his assistants assigned to the Division;

(3) the respondent, his parents or guardians, and their duly authorized attorneys;

(4) any court or its probation staff, for purposes of sentencing the respondent as a defendant in a criminal case and the counsel for the defendant in that case;

(5) public or private agencies or institutions providing supervision or treatment or having custody of the child, if supervision, treatment, or custody is under order of the Division;

(6) the United States Attorney for the District of Columbia, his assistants, and any other prosecuting attorneys involved in the investigation or trial of a criminal case arising out of the same transaction or occurrence as a case in which a child is alleged to be delinquent; and

(7) other persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or of a member of his family, or in the work of the Superior Court, if authorized by rule or special order of the court.

Records inspected may not be divulged to unauthorized persons. The prosecuting attorney inspecting records pursuant to paragraph (6) of this subsection may divulge the contents to the extent required in the prosecution of a criminal case, and the United States Attorney for the District of Columbia and his assistants may inspect a transcript of the testimony of any witness and divulge the contents to the extent required by the prosecution of the witness for perjury, without, wherever possible, naming or otherwise revealing the identity of a child under the jurisdiction of the Division.

(c) Notwithstanding subsection (b), the Superior Court may by rule or special order provide that particular items or classes of items in juvenile case records shall not be open to inspection except pursuant to rule or special order; but, in dispositional proceedings after an adjudication, no item considered by the judge (other than identification of the sources of confidential information) shall be withheld from inspection (1) in delinquency or need of supervision cases, by the attorney for the child, or (2) in neglect cases, by the attorney for the child and an attorney for the parent, guardian, or other custodian of the child.

(d) The Superior Court may by rule or special order provide procedures for the inspection or copying of juvenile case records by persons entitled to inspect them. No person receiving any record or information pursuant to this section may publish or use it for any purpose other than that for which it was received without a special order of the court.

(e) No person shall disclose, inspect, or use records in violation of this section. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 539.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–2302, 16–2334, 16–2335.

§ 16–2331. Juvenile social records; confidentiality; inspection and disclosure

(a) As used in this section, the term "juvenile social records" refers to all social records made with respect to a child in any proceedings over which the Division has jurisdicition under section 11–1101(13), including preliminary inquiries, predisposition studies, and examination reports.

(b) Juvenile social records shall be kept confidential and shall not be open to inspection; but, subject to the limitations of subsection (c), the inspection of those records shall be permitted to—

(1) judges and professional staff of the Superior Court and the Corporation Counsel and his assistants assigned to the Division;

(2) the attorney for the child at any stage of a proceeding in the Division, including intake;

(3) any court or its probation staff, for purposes of sentencing the child as a defendant in a criminal case, and, if and to the extent other presentence materials are disclosed to him, the counsel for the defendant in that case;

(4) public or private agencies or institutions providing supervision or treatment, or having custody of the child, if the supervision, treatment, or custody is under order of the Division; and

(5) other persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the respondent or of a member of his family, or in the work of the Division, if authorized by rule or special order of the court.

Records inspected may not be divulged to unauthorized persons.

(c) Notwithstanding subsection (b), the Superior Court may by rule or special order provide that particular items or classes of items in juvenile social records shall not be open to inspection except pursuant to rule or special order; but, in dispositional proceedings after an adjudication, no item considered by the judge (other than identification of the sources of confidential information) shall be withheld from inspection (1) in delinquency or need of supervision cases, by the attorney for the child, or (2) in neglect cases, by the attorney for the child and an attorney for the parent, guardian, or other custodian of the child.

(d) The Superior Court may by rule or special order provide procedures for the inspection or copying of juvenile social records by persons entitled to inspect them. No person receiving any record or information pursuant to this section may publish or use it for any purpose other than that for which it was received without a special order of the court.

(e) No person shall disclose, inspect, or use records in violation of this section. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 540.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–2334, 16–2335.

§ 16–2332. Police and other law enforcement records

(a) Law enforcement records and files concerning a child shall not be open to public inspection nor shall their contents or existence be disclosed to the public unless a charge of delinquency is transferred for criminal prosecution under section 16–2307, the interest of national security requires, or the court otherwise orders in the interest of the child.

(b) Inspection of such records and files is permitted by—

(1) the Superior Court, having the child currently before it in any proceeding;

(2) the officers of public and private institutions or agencies to which the child is currently committed, and those professional persons or agencies responsible for his supervision after release;

(3) any other person, agency or institution, by order of the court, having a professional interest in the child or in the work of the law enforcement department;

(4) law enforcement officers of the United States, the District of Columbia, and other jurisdictions when necessary for the discharge of their current official duties;

(5) a court in which a person is charged with a criminal offense for the purposes of determining conditions of release or bail;

(6) a court in which a person is convicted of a criminal offense for the purpose of a presentence report or other dispositional proceeding, or by officials of penal institutions and other penal facilities to which he is committed, or by a parole board in considering his parole or discharge or in exercising supervision over him; and

(7) the parent, guardian, or other custodian and counsel for the child.

(c) Photographs may be displayed to potential witnesses for identification purposes, in accordance with the standards of fairness applicable to adults.

(d) No person shall disclose, inspect, or use records or files in violation of this section. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 541.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–2334, 16–2335.

§ 16–2333. Fingerprint records

(a) The contents or existence of law enforcement records and files of the fingerprints of a child shall not be disclosed by the custodians thereof, except—

(1) to a law enforcement officer of the United States, the District of Columbia, or other jurisdiction for purposes of the investigation and trial of a criminal offense; or

(2) pursuant to rule or special order of the court.

(b) When a child is transferred for criminal prosecution under section 16–2307, law enforcement records and files of his fingerprints relating to any matter so transferred shall be deemed those of an adult.

(c) No person shall disclose, inspect, or use records in violation of this section. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 542.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–2335.

§ 16–2334. Sealing of records

(a) On motion of a person who has been the subject of a petition filed pursuant to section 16–2305, or on the Division's own motion, the Division shall vacate its order and findings and shall order the

sealing of the case and social records referred to in sections 16–2330 and 16–2331 and the law enforcement records and files referred to in section 16–2332, or those of any other agency active in the case if it finds that—

(1)(A) a neglected child has reached his majority; or

(B) two years have elapsed since the final discharge of the person from legal custody or supervision, or since the entry of any other Division order not involving custody or supervision; and

(2) he has not been subsequently convicted of a crime, or adjudicated delinquent or in need of supervision prior to the filing of the motion, and no proceeding is pending seeking such conviction or adjudication.

(b) Reasonable notice of a motion shall be given to—

(1) the person who is the subject of the petition;

(2) the Corporation Counsel;

(3) the authority granting the discharge, if the final discharge was from an institution, parole, or probation; and

(4) the law enforcement department having custody of the files and records specified in section 16–2332.

(c) Upon the entry of the order, the proceedings in the case shall be treated as if they never occurred. All facts relating to the action including arrest, the filing of a petition, and the adjudication, filing, and disposition of the Division shall no longer exist as a matter of law. The Division, the law enforcement department, or any other department or agency that received notice under subsection (b) and was named in the order shall reply, and the person who is the subject matter of the records may reply, to any inquiry that no record exists with respect to such person.

(d) Inspection of the files and records included in the order may thereafter be permitted by the Division only upon motion by the person who is the subject of such records, and may be made only by those persons named in the motion; but the Division in its discretion may, by special order in an individual case, permit inspection by or release of information in the records to persons having a professional interest in the protection, welfare, treatment, and rehabilitation of the person who is the subject of the petition or other members of his family.

(e) Any adjudication of delinquency or need of supervision or conviction of a felony subsequent to sealing shall have the effect of nullifying the vacating and sealing order.

(f) A person who has been the subject of a petition filed under this subchapter shall be notified of his rights under subsection (a) at the time a dispositional order is entered and again at the time of his final discharge from supervision, treatment, or custody.

(g) No person shall disclose, receive, or use records in violation of this section. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 542.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–2322, 16–2335.

§ 16–2335. Unlawful disclosure of records; penalties

Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information concerning a child or other person in violation of sections 16–2330 through 16–2334, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $250 or imprisoned not more than ninety days, or both. Violations of this section shall be prosecuted by the Corporation Counsel in the name of the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 543.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–2302.

§ 16–2336. Additional powers of the Director of Social Services

In addition to the powers and duties prescribed in section 11–1722, the Director of Social Services shall have power to take into custody and place in detention or shelter care, in accordance with this subchapter, children who are under his supervision as delinquent, in need of supervision, or neglected, or children who have run away from agencies or institutions to which they were committed under this subchapter. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 543.)

§ 16–2337. Emergency medical treatment

Nothing in this subchapter shall prevent a public agency having custody of a child who is under jurisdiction of the Division from providing the child with emergency medical treatment. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 543.)

SUBCHAPTER II.—PATERNITY PROCEEDINGS

§ 16–2341. Representation

(a) Where a public support burden has been incurred or is threatened, the Corporation Counsel, or any of his assistants, shall bring a civil action in the Family Division on behalf of any wife or child to enforce support of such wife or child.

(b) In all cases over which the Division has jurisdiction under paragraphs (3), (4), (10), and (11) of section 11–1101, where the court deems it necessary and proper, an attorney shall be appointed by the court to represent the respondent.

(c) Nothing in this section shall be construed to interfere with the right of an individual to file a civil action over which the Division has jurisdiction under the paragraphs of section 11–1101 referred to in subsection (b). (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 544.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–2342. Time of bringing complaint

Proceedings over which the Division has jurisdiction under paragraphs (3) and (11) of section 11–1101 to establish paternity and and provide for

the support of a child born out of wedlock may be instituted after four months of pregnancy or within two years after the birth of the child, or within one year after the putative father has ceased making contributions for the support of the child. The time during which the respondent is absent from the jurisdiction shall be excluded from the computation of the time within which a complaint may be filed. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 544.)

NOTES TO DECISIONS UNDER PRIOR LAW

[See also §§ 16–2344, 16–2345, and 16–2349, and other sections in title 16, chapter 23, in 1967 edition]

Constitutionality

Constitutional guaranty of right to speedy trail in all criminal prosecutions does not apply to paternity cases. *District of Columbia* v. *W. D. Howie and D. Jones* (D.C. App. 1967, 230 A. 2d 715).

Default judgment

In case in which defendant putative father failed to plead or otherwise defend, although properly served with process, in action by mother for support and maintenance of minor child, mother, upon filing of affidavit in support, was entitled to entry of default, and ex parte proof of defendant's paternity was not required. *E. V. Taylor* v. *B. A. Johnson, Jr.* (D.C. App. 1970, 262 A. 2d 803).

Dismissal because of delay

Defendants in paternity proceedings were not entitled to dismissal of proceedings because of delay due to court's congested docket where records did not disclose that either defendant objected to continuance or made demand for speedy preliminary hearing. *District of Columbia* v. *W. D. Howie and D. Jones* (D.C. App. 1967, 230 A. 2d 715).

Filing of complaint as tolling of statute

Filing of complaint is not sufficient to stop running of time limitation in statute regarding proceedings to establish paternity unless such filing is followed by issuance of summons without reasonable delay. *District of Columbia* v. *W. D. Howie and D. Jones* (D.C. App. 1967, 230 A. 2d 715).

"Forthwith", within statute providing that upon filing of complaint in paternity proceedings case should be calendared forthwith means without unreasonable delay, and does not mean immediately. *Id.*

Prima facie case

Decision that district had failed to establish prima facie case of paternity against defendant was not erroneous as matter of law. *District of Columbia* v. *T. Stovall, Jr.* (D.C. App. 1969, 253 A. 2d 541).

Procedure

Procedure whereby initial appearance in court in paternity proceedings partakes of nature of arraignment and case is then continued for preliminary hearing either because parties are not prepared for hearing or court schedule will not permit it is proper. *District of Columbia* v. *W. D. Howie and D. Jones* (D.C. App. 1967, 230 A. 2d 715).

Unreasonable delay in issuance of summons

Delay of thirty-four days and forty days, respectively, between filing of complaint and issuance of summons was not unreasonable and therefore filing of complaints stopped running of one year statute of limitations applicable in cases where father ceases making contributions to support of child. *District of Columbia* v. *W. D. Howie and D. Jones* (D.C. App. 1967, 230 A. 2d 715).

Essential requirement under statute regarding establishment of paternity is that upon filing of complaint defendant be notified without unreasonable delay of pendency of charge against him and nature of the charge. *Id.*

§ 16–2343. Blood tests

When it is relevant to an action over which the Division has jurisdiction under section 11–1101, the court may direct that the mother, child, and the respondent submit to one or more blood tests to determine whether or not the respondent can be excluded as being the father of the child, but the results of the test may be admitted as evidence only in cases where the respondent does not object to its admissability. Where the parties cannot afford the cost of a blood test, the court may direct the Department of Public Health to perform such tests without fee. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 544.)

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 16–2347 and other sections in title 16, chapter 23, in the 1967 edition]

Blood tests

Where defendant's request for blood test was made at trial in bastardy proceeding after all evidence had been heard and in summation by counsel for defendant and no request for blood test had been made in seven months' period since counsel for defendant had entered an appearance, denial of request for blood test was not an abuse of discretion. *R. Minor, Jr.* v. *District of Columbia* (D.C. App. 1968, 241 A. 2d 196).

Granting or denial of request for blood test in paternity case is discretionary with court. *Id.*

§ 16–2344. Exclusion of public

Upon trial or proceedings over which the Division has jurisdiction under paragraph (3), (4), (10), or (11) of section 11–1101, the court may exclude the general public and, at the request of either party, shall exclude the general public. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 544.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–2345. New birth record upon marriage of natural parents

When a certified copy of a marriage certificate is submitted to the Director of Public Health, establishing that the previously unwed parents of a child born out of wedlock have intermarried subsequent to the birth of the child, and the paternity of the child has been judicially determined or acknowledged by the husband before the Commissioner of the District of Columbia or his designated agent, or has been acknowledged in an affidavit sworn to by the husband before a judge or the clerk of a court of record, or before an officer of the armed forces of the United States authorized to administer oaths, and the affidavit is delivered to the Commissioner or his designated agent, a new certificate of birth bearing the original date of birth and the names of both parents shall be issued and substituted for the certificate of birth then on file. The original certificate of birth and all papers pertaining to the issuance of the new certificate shall be placed under seal and opened for inspection only upon order of the Family Division. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 544.)

§ 16–2346. Reports to Director of Public Health

(a) Upon entry of a final judgment determining the paternity of a child born out of wedlock, the clerk of the court shall forward a certificate to the Director of Public Health of the District of Columbia, or his authorized representative in the jurisdiction in which the child was born, giving the name of the person adjudged to be the father of the child.

(b) Upon receipt of the certificate provided for by subsection (a) of this section, the Director of Public Health or his authorized representative shall file it with the original birth record, and thereafter may issue a certificate of birth registration including thereon the name of the person adjudged to be the father of the child. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 545.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–2348.

§ 16–2347. Death of respondent; liability of estate

If the respondent dies after paternity has been established and prior to the time the child reaches the age of 18 years, any sums due and unpaid under an order of the court at the time of his death shall constitute a valid claim against his estate. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 545.)

§ 16–2348. Paternity records; confidentiality; inspection and disclosure

(a) Except on order of the Family Division, no records in a case over which the Division has jurisdiction under section 11–1101(11) shall be open to inspection by anyone other than the plaintiff, respondent, their attorneys of record, or authorized professional staff of the Superior Court. The Family Division, upon proper showing, may authorize the furnishing of certified copies of the records or portions thereof to the respondent, the mother, or custodian of the child, a party in interest, or their duly authorized attorneys. Certified copies of the records or portions thereof may be furnished, upon request, to the Corporation Counsel for use as evidence in nonsupport proceedings and to the Director of Public Health as provided by section 16–2346(a).

(b) No person shall disclose, receive, or use records in violation of this section. Whoever willfully discloses, receives, makes use of, or knowingly permits the use of information in violation of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $250 or imprisoned not more than ninety days, or both. Violations of this section shall be prosecuted by the Corporation Counsel in the name of the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 121(a), title I, 84 Stat. 545.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 16–2342 in 1967 Edition]

Jencks Act

Paternity proceeding brought in name of District of Columbia against putative father is governed by requirements of due process and is subject to principle of Jencks Act, accordingly, prior statements of government witnesses in possession of government must be turned over to defendant at trial. *E. Saunders, Jr.* v. *District of Columbia* (D.C. App. 1970, 263 A. 2d 58).

Chapter 25.—CHANGE OF NAME

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 11–921.

§ 16–2501. Application; persons who may file

Whoever, being a resident of the District and desiring a change of name, may file an application in the Superior Court setting forth the reasons therefor and also the name desired to be assumed. If the applicant is an infant, the application shall be filed by his parent, guardian, or next friend. (Dec. 23, 1963, 77 Stat. 595, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(i), 84 Stat. 560.)

AMENDMENT

1970—Section 145(i) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–2502. Notice; contents

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–2503.

Chapter 27.—NEGLIGENCE CAUSING DEATH

§ 16–2701. Liability; damages; prior recovery as precluding action

When, by an injury done or happening within the limits of the District, the death of a person is caused by the wrongful act, neglect, or default of a person or corporation, and the act, neglect, or default is such as will, if death does not ensue, entitle the person injured, or if the person injured is a married woman, entitle her husband, either separately or by joining with the wife, to maintain an action and recover damages, the person who or corporation that is liable if death does not ensue is liable to an action for damages for the death, notwithstanding the death of the person injured, even though the death is caused under circumstances that constitute a felony.

The damages shall be assessed with reference to the injury resulting from the act, neglect, or default causing the death, to the spouse and the next of kin of the deceased person; and shall include the reasonable expenses of last illness and burial. Where there is a surviving spouse, the jury shall allocate the portion of its verdict payable to the spouse and next of kin, respectively, according to the finding of damage to the spouse and next of kin. If, in a particular case, the verdict is deemed excessive the trial judge or the appellate court, on appeal of the cause, may order a reduction of the verdict. An action may not be maintained pursuant to this chapter if the party injured by the wrongful act, neglect, or default has recovered damages therefor during his life. (Dec. 23, 1963, 77 Stat. 596, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(j), 84 Stat. 560.)

AMENDMENT

1970—Section 145(j) of Act July 29, 1970, Public Law 91–358, amended second paragraph of section by striking out "United States Court of Appeals for the District of Columbia Circuit" and inserting in lieu thereof "appellate court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS

Collateral estoppel

Adverse judgment in suit by widow, as sole beneficiary, to collect on policy which was payable only if deceased had sustained injury through external violent and accidental means, rendered after evidence disclosed that

deceased had suffered a stroke independent of and immediately prior to automobile collision, did not collaterally estop window, as administratrix of estate of deceased, from bringing an action on her own behalf and behalf of her minor children for wrongful death of deceased against owner and driver of taxicab with which deceased's automobile had collided. *V. Smith et al.* v. *J. W. Hood et ano.* (1968, 396 F. 2d 692, 130 U.S. App. D.C. 43).

Doctrine of collateral estoppel does not undercut principle that person whose rights were not at issue in prior proceeding is not precluded by judgment therein. *Id.*

Construction

Wrongful Death Act creates a new right of action, upon death of injured person, for benefit of his next of kin. *P. Wharton and L. Wharton, etc.* v. *G. L. Jones, et al.* (1968, 285 F. Supp. 634).

Reduction of verdict

District of Columbia wrongful death act empowers trial court to act sua sponte in exercise of its sound discretion to order reduction of verdict, without time limitation, and authorizes reduction of amount of damages directly without necessity of requiring remittitur as condition to denial of new trial. *S. A. Thomas as the administrator etc., and J. F. Wynn, Jr.* v. *Potomac Electric Power Company and District of Columbia* (1967, 266 F. Supp. 687).

Award of $155,000 for death of 26-year-old father of two who had recently graduated from college and was planning to work as teacher was excessive where it represented amount shown by actuarial testimony to be his probable future earnings in teaching profession, reduced to present worth, without reduction in light of vicissitudes of fortune, buffetings of fate, and uncertainties of life and health, and would be reduced to $90,000. *Id.*

Separate and independent claims

Negligent conduct resulting in death may generate simultaneously two independent bases for action, one under the Survival Act and the other under the Wrongful Death Act, upon each of which damages may be sought. *W. J. Emmett, Administrator, etc.* v. *Eastern Dispensary and Casualty Hospital, et al.* (1967, 396 F. 2d 931, 130 U.S. App. D.C. 50).

Negligent act causing death can give rise simultaneously to separate and independent claims under Wrongful Death Act and under Survival Act. *P. Wharton and L. Wharton etc.* v. *G. L. Jones et al.* (1968, 285 F. Supp. 634).

Tolling of statute

Pendency of personal injury action under Survival Act does not toll statute of limitations on a death claim. *P. Wharton and L. Wharton etc.* v. *G. L. Jones et al.* (1968, 285 F. Supp. 634).

Pendency of wrongful death action did not toll statute of limitations on claim under Survival Act. *Id.*

§ 16–2702. Party plaintiff; statute of limitations

NOTES TO DECISIONS

Collateral estoppel

Adverse judgment in suit by widow, as sole beneficiary to collect on policy which was payable only if deceased had sustained injury through external violent and accidental means rendered after evidence disclosed that deceased had suffered a stroke independent of and immediately prior to automobile collision, did not collaterally estop widow, as administratrix of estate of deceased, from bringing an action on her own behalf and behalf of her minor children for wrongful death of deceased against owner and driver of taxicab with which deceased's automobile had collided. *V. Smith et al.* v. *J. W. Hood et ano.* (1968, 396 F. 2d 692, 130 U.S. App. D.C. 43).

Tolling of statute

Fraudulent concealment of information moving party needs in order to determine whether there is a litigable dispute tolls the running of statute of limitations on death action. *W. J. Emmett, Administrator, etc.* v. *Eastern Dispensary and Casualty Hospital et al.* (1967, 396 F. 2d 931 130 U.S. App. D.C. 50).

Statute of limitations on filing wrongful death and survival action was tolled by unprivileged failure of physician and hospital to permit decedent's son to inspect decedent's medical records. *Id.*

Chapter 29.—PARTITION AND ASSIGNMENT OF DOWER

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–501, 11–921.

SUBCHAPTER I.—PARTITION GENERALLY

§ 16–2901. Parties; accounting by tenant in common

The Superior Court of the District of Columbia may decree a partition of lands, tenements, or hereditaments on the complaint of a tenant in common, claiming by descent or purchase, or of a joint tenant; or when it appears that the property can not be divided without loss or injury to the parties interested, the court may decree a sale thereof and a division of the money arising from the sale among the parties, according to their respective rights.

(b)[1] This section applies to cases where:

(1) all the parties are of full age;

(2) all the parties are infants;

(3) some of the parties are of full age and some are infants;

(4) some or all of the parties are non compos mentis; and

(5) all or any of the parties are non-residents—

and a party, whether of full age, infant, or non compos mentis, may file a complaint pursuant to this section, an infant by his guardian or next friend, and a person non compos mentis by his committee.

(c) In a case of partition, when a tenant in common has received the rents and profits of the property to his own use, he may be required to account to his cotenants for their respective shares of the rents and profits. Amounts found to be due on the accounting may be charged against the share of the party owing them in the property, or its proceeds in case of sale.

(d) This section does not affect sections 21–146 and 21–704. (Dec. 23, 1963, 77 Stat. 597, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(k) (1), (2), 84 Stat. 561.)

AMENDMENT

1970—Section 145(k)(1) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

Section 145(k)(2) of the act struck out section "21–213" in subsection (d) and inserted in lieu, "sections 21–146 and 21–704".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note 15–707.

SUBCHAPTER II.—ASSIGNMENT OF DOWER; PARTIES TO PARTITION PROCEEDINGS; SALE OF PROPERTY DISCHARGED FROM DOWER OR SPOUSE'S INTESTATE SHARE

§ 16–2921. Appointment of commissioners; cases of partition

When real property is held by a person or persons, by descent or purchase, in the whole of which a widow or widower is entitled to dower, either the widow or widower of a person entitled to the property or an undivided share therein may apply to the Superior Court of the District of Columbia to

[1] So in original. First par. is not designated "(a)".

have the dower therein assigned. Thereupon, the court shall appoint three commissioners to lay off and assign the dower, if practicable. The report of the commissioners is subject to ratification by the court. In all cases of partition between two or more joint tenants or tenants in common of real property, in the whole or which a widow or widower is entitled to dower, the dower shall be laid off and assigned, in like manner, before the partition is decreed. When an estate of which a woman or man is dowable is entire, and the dower can not be set off therefrom by metes and bounds, it may be assigned by the court as of a third part of the net rents, issues, and profits thereof. (Dec. 23, 1963, 77 Stat. 597, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(k)(1), 84 Stat. 561.)

AMENDMENT

1970—Section 145(k)(1) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 15–707.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–2922.

§ 16–2923. Wife or husband as party to partition proceeding

On an application to the court to decree a partition of real property between tenants in common, it shall not be necessary to make the wife or husband of any of the persons a party to the proceedings, but the right of dower, or the wife's or husband's intestate share, as the case may be, shall attach to whatever part of the property is assigned in severalty to the wife or husband, and the other parts thereof shall be assigned free of the right of dower or intestate share. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(k)(3), 84 Stat. 561.)

AMENDMENT

1970—Section 145(k)(3) of Act July 29, 1970, Public Law 91–358, amended section by striking out "District Court" and inserting in lieu "court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–2924. Sale of land encumbered by dower; lack of widow's or widower's consent; written consent; portion of proceeds

When a decree is rendered for the sale of real property, in the whole of which a widow or widower is entitled to dower, if she or he will not consent to a sale of the property free of the dower, the court may, if it appears advantageous to the parties, cause the dower to be laid off and assigned as provided by this subchapter. If she or he will consent in writing to the sale of the property free of the dower, the court shall order that it be sold free of the dower, and shall allow her or him, in commutation of the dower, such portion of the net proceeds of sale as may be just and equitable, not exceeding one-sixth nor less than one-twentieth, according to the age, health, and condition of the widow or widower. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(k)(3), 84 Stat. 561.)

AMENDMENT

1970—Section 145(k)(3) of Act July 29, 1970, Public Law 91–358, amended section by striking out "District Court" and inserting in lieu thereof "court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–2925. Sale of indivisible property; discharge from dower of intestate share

When real property is decreed to be sold for the purpose of division of the proceeds between tenants in common because the property is incapable of being divided between them in specie, the court may decree a sale of the property free and discharged from any right of dower or from any intestate share of the wife or husband, as the case may be, of any of the parties in her or his undivided share. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(k)(3), 84 Stat. 561.)

AMENDMENT

1970—Section 145(k)(3) of Act July 29, 1970, Public Law 91–358, amended section by striking out "District Court" and inserting in lieu thereof "court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 31.—PROBATE COURT PROCEEDINGS

§ 16–3101. Definition

As used in this chapter, the term "Probate Court" means the Superior Court of the District of Columbia. (Dec. 23, 1963, 77 Stat. 598, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, § 145(*l*)(1), title I, 84 Stat. 561.)

AMENDMENT

1970—Section 145(l)(1) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 15–707.

§ 16–3103. Summons; failure to appear or give evidence

A summons issued by the Probate Court to a person concerned in the affairs of a deceased person, or to a witness or other person whose appearance in the court is deemed necessary or proper, is returnable at the discretion of the court. When it is necessary or proper, on the return of the "summoned", and failure of the person to appear, to enforce his appearance, or when a witness before the court refuses to give evidence, the court may exercise its contempt power, or it may have his estate, or a part thereof attached and sequestered as provided by section 16–3104. (Dec. 23, 1963, 77 Stat. 599, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(*l*)(2), 84 Stat. 561.)

AMENDMENT

1970—Section 145(l)(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out "powers of enforcement and punishment as provided by section 401 of title 18, United States Code" and inserting in lieu, "contempt power".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 15–707.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–3107.

§ 16–3104. Sequestration where person fails to appear

(a) * * *

(b) The persons authorized pursuant to subsection (a) of this section to take into their care and custody the property referred to shall first give bond with such security, and in such penalty, as the court directs. The bond shall be recorded, may be sued on, shall be on a footing with an administration bond, and shall be conditioned for rendering a true account of the estate or property, and of the profits thereof, and to deliver the property according to the order of the court, after deducting such allowance for loss, and such commission, not exceeding 5 per centum of the whole, as the court deems proper.

(c) * * *

(As amended July 29, 1970, Pub. L. 91–358, Title I, § 145(*l*) (3), 84 Stat. 561.)

AMENDMENT

1970—Section 145(1) (3) of Act July 29, 1970, Public Law 91–358 amended subsection (b) by striking out "to the United States".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note 15–707.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–3103, 16–3105 to 16–3107.

§ 16–3105. Plenary proceeding; refusal to answer as required

When either of the parties having a contest in the Probate Court requires, the court may direct a plenary proceeding, by bill or petition, to which there shall be an answer, on oath or affirmation. If the party, refuses to answer on oath or affirmation, as the case may require, to any matter alleged in the bill or petition, and proper for the court to decide upon, the court may exercise its contempt power, or it may have his property attached and sequestered as provided by section 16–3104. (Dec. 23, 1963, 77 Stat. 599, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(*l*) (2), 84 Stat. 561.)

AMENDMENT

1970—Section 145(1) (2) of Act July 29, 1970, Public Law 91–358 amended section by striking out "powers of enforcement and punishment as provided by section 401 of title 18, United States Code" and inserting in lieu, "contempt power".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 15–707.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–3106.

§ 16–3106. Issues to be made up in plenary proceeding; jury; compelling payment of costs

In a plenary proceeding provided for by section 16–3105, the Probate Court shall give judgment, or decree upon the bill an answer, or upon bill, answer, depositions, or finding of the jury. In all cases of contest, the court may award costs to the party deemed entitled thereto, and may compel payment by exercising its contempt power, or by attachment and sequestration of the property as provided by section 16–3104. (Dec. 23, 1963, 77 Stat. 600, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(*l*) (2), 84 Stat. 561.)

AMENDMENT

1970—Section 145(1) (2) of Act July 29, 1970, Public Law 91–358 amended section by striking out "powers of enforcement and punishment as provided by section 401 of title 18, United States Code" and inserting in lieu, "contempt power".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 15–707.

§ 16–3107. Enforcement of judgments, orders and decrees; application of property sequestrated

NOTES TO DECISIONS

Title to property

There is no restriction upon district court, sitting in probate, which limits its power to adjudicate right to possession of personalty. *C. M. Price and G. P. Marshall, Jr., etc.* v. *E. B. Williams et al.* (1968, 393 F. 2d 348, 129 U.S. App. D.C. 239).

§ 16–3112. Arbitration; exceptions

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–3102.

Chapter 33.—QUIETING TITLE OBTAINED BY ADVERSE POSSESSION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 11–921.

§ 16–3301. Complaint; allegations; parties; service; decree

When title to real property in the District of Columbia has become vested in a person by adverse possession, the holder thereof may file a complaint in the Superior Court of the District of Columbia to have the title perfected. In the complaint, it is sufficient to allege that the plaintiff holds the title to the property, and that it has vested in him, or in himself and in those under whom he claims, by adverse possession. In the action, it is not necessary to make any person a party defendant except those persons who appear to have a claim or title adverse to that of the plaintiff. Upon the trial of the cause, proof of the facts showing title in the plaintiff by adverse possession entitles him to decree of the court declaring his title by adverse possession, and a copy of the decree may be entered of record in the office of the Recorder of Deeds for the District.

(b)[1] In an action pursuant to this section, if process is returned not to be found, notice by publication may be substituted as in the case of nonresident defendants. Subject to subsection (c) of this section, if it is known whether one who, if living, would be an adverse party, is living or dead, or, in the case of a decedent, whether he died testate or left heirs, or his heirs or devisees are unknown, the cause may be proceeded with pursuant to section 13–341.

(c) The rights of infants or others under legal disability shall be saved for a period of two years after the removal of their disabilities, but the entire period during which they shall be preserved may not exceed twenty-two years from the time they accrued, either in the plaintiff or in the persons under whom he claims. (Dec. 23, 1963, 77 Stat. 601, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(m), 84 Stat. 561.)

AMENDMENT

1970—Section 145(m) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States

[1] So in original. First par. is not designated "(a)".

District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 35.—QUO WARRANTO

SUBCHAPTER I.—ACTIONS AGAINST OFFICERS OF THE UNITED STATES

Sec.
16–3501. Persons against whom issued; civil action.
16–3502. Parties who may institute; ex rel. proceedings.
16–3503. Refusal of Attorney General or United States attorney to act; procedure.

SUBCHAPTER II.—ACTIONS AGAINST OFFICERS OR CORPORATIONS OF THE DISTRICT OF COLUMBIA

16–3521. Persons against whom issued; civil action.
16–3522. Parties who may institute; ex rel. proceedings.
16–3523. Refusal of United States attorney or Corporation Counsel to act; procedures.

SUBCHAPTER III.—PROCEDURES AND JUDGMENTS

16–3541. Allegations in petition of relator claiming office.
16–3542. Notice to defendant.
16–3543. Proceedings on default.
16–3544. Pleading; jury trial.
16–3545. Verdict and judgment.
16–3546. Usurping corporate franchise; judgment.
16–3547. Proceedings against corporate directors and trustees; judgment and order; enforcement.
16–3548. Recovery of damages from usurper; limitation.

AMENDMENT OF CHAPTER

Sec. 145(n) of Act July 29, 1970, Pub. L. 91–358, amended this chapter to read as hereinafter set out. The original chapter which this section amends, was a part of section 1, of the Act of Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 478, et seq. The original chapter consisted of sections 16–3501 to 16–3511, whereas the amended chapter is divided into three subchapters and consists of sections 16–3501 to 16–3503, 16–3521 to 16–3523 and 16–3541 to 16–3548. For provisions of the original chapter as the same may have been, previously amended, see the 1967 edition of the Code and Supp. III, thereto.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 11–921.

SUBCHAPTER I.—ACTIONS AGAINST OFFICERS OF THE UNITED STATES

§ 16–3501. Persons against whom issued; civil action

A quo warranto may be issued from the United States District Court for the District of Columbia in the name of the United States against a person who within the District of Columbia usurps, intrudes into, or unlawfully holds or exercises, a franchise conferred by the United States or a public office of the United States, civil or military. The proceedings shall be deemed a civil action. (As amended, July 29, 1970, Pub. L. 91–358, § 145(n) title I, 84 Stat. 562.)

§ 16–3502. Parties who may institute; ex rel. proceedings

The Attorney General of the United States or the United States attorney may institute a proceeding pursuant to this subchapter on his own motion or on the relation of a third person. The writ may not be issued on the relation of a third person except by leave of the court, to be applied for by the relator, by a petition duly verified setting forth the grounds of the application, or until the relator files a bond with sufficient surety, to be approved by the clerk of the court, in such penalty as the court prescribes, conditioned on the payment by him of all costs incurred in the prosecution of the writ if costs are not recovered from and paid by the defendant. (As amended, July 29, 1970, Pub. L. 91–358, § 145(n), title I, 84 Stat. 562.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–3503.

§ 16–3503. Refusal of Attorney General or United States attorney to act; procedure

If the Attorney General or United States attorney refuses to institute a quo warranto proceeding on the request of a person interested, the interested person may apply to the court by certified petition for leave to have the writ issued. When, in the opinion of the court, the reasons set forth in the petition are sufficient in law, the writ shall be allowed to be issued by any attorney, in the name of the United States, on the relation of the interested person on his compliance with the condition prescribed by section 16–3502 as to security for costs. (As amended, July 29, 1970, Pub. L. 91–358, § 145(n), title I, 84 Stat. 562.)

SUBCHAPTER II.—ACTIONS AGAINST OFFICERS OR CORPORATIONS OF THE DISTRICT OF COLUMBIA

16–3521. Persons against whom issued; civil action

A quo warranto may be issued from the Superior Court of the District of Columbia in the name of the District of Columbia against—

(1) a person who within the District of Columbia usurps, intrudes into, or unlawfully holds or exercises, a franchise conferred by the District of Columbia, a public office of the District of Columbia, civil or military, or an office in a domestic corporation; or

(2) one or more persons who act as a corporation within the District of Columbia without being duly authorized, or exercise within the District of Columbia corporate rights, privileges, or franchises not granted them by law in force in the District of Columbia.

The proceedings shall be deemed a civil action. (As amended, July 29, 1970, Pub. L. 91–358, § 145(n), title I, 84 Stat. 562.)

§ 16–3522. Parties who may institute; ex rel. proceedings

The United States attorney or the Corporation Counsel may institute a proceeding pursuant to this subchapter on his own motion, or on the relation of a third person. The writ may not be issued on the relation of a third person except by leave of the court, to be applied for by the relator, by a petition duly verified, setting forth the grounds of the application, or until the relator files a bond with sufficient surety, to be approved by the clerk of the court, in such penalty as the court prescribes, conditioned on the payment by him of all costs incurred in the prosecution of the writ if costs are not recovered from and paid by the defendant. (As amended, July 29, 1970, Pub. L. 91–358, § 145(n), title I, 84 Stat. 562.)

§ 16–3523. Refusal of United States attorney or Corporation Counsel to act; procedures

If the United States attorney or Corporation Counsel refuses to institute a quo warranto proceeding on the request of a person interested, the interested person may apply to the court by certified petition for leave to have the writ issued. When, in the opinion of the court, the reasons set forth in the petition are sufficient in law, the writ shall be allowed to be issued by any attorney, in the name of the District of Columbia, on the relation of the interested person, on his compliance with the conditions prescribed by section 16–3522 as to security for costs. (As amended, July 29, 1970, Pub. L. 91–358, § 145(n), title I, 84 Stat. 563.)

SUBCHAPTER III.—PROCEDURES AND JUDGMENTS

§ 16–3541. Allegations in petition of relator claiming office

When a quo warranto proceeding is against a person for usurping an office, on the relation of a person claiming the same office, the relator shall set forth in his petition the facts upon which he claims to be entitled to the office. (As amended, July 29, 1970, Pub. L. 91–358, § 145(n), title I, 84 Stat. 563.)

§ 16–3542. Notice to defendant

On the issuing of a writ of quo warranto the court may fix a time within which the defendant may appear and answer the writ. When the defendant cannot be found in the District of Columbia, the court may direct notice to be given to him by publication as in other cases of proceedings against nonresident defendants, and upon proof of publication, if the defendant does not appear, judgment may be rendered as if he had been personally served. (As amended, July 29, 1970, Pub. L. 91–358, § 145(n), title I, 84 Stat. 563.)

§ 16–3543. Proceedings on default

If the defendant does not appear as required by a writ of quo warranto, after being served, the court may proceed to hear proof in support of the writ and render judgment accordingly. (As amended, July 29, 1970, Pub. L. 91–358, § 145(n), title I, 84 Stat. 563.)

§ 16–3544. Pleading; jury trial

In a quo warranto proceeding, the defendant may demur, plead specially, or plead "not guilty" as the general issue, and the United States or the District of Columbia, as the case may be, may reply as in other actions of a civil character. Issues of fact shall be tried by a jury if either party requests it. Otherwise they shall be determined by the court. (As amended, July 29, 1970, Pub. L. 91–358, § 145(n), title I, 84 Stat. 563.)

§ 16–3545. Verdict and judgment

Where a defendant in a quo warranto proceeding is found by the jury to have usurped, intruded into, or unlawfully held or exercised an office or franchise, the verdict shall be that he is guilty of the act or acts in question, and judgment shall be rendered that he be ousted and excluded therefrom and that the relator recover his costs. (As amended, July 29, 1970, Pub. L. 91–358, § 145(n), title I, 84 Stat. 563.)

§ 16–3546. Usurping corporate franchise; judgment

Where a quo warranto proceeding is against persons acting as a corporation without being legally incorporated, the judgment against the defendants shall be that they be perpetually restrained and enjoined from the commission or continuance of the acts complained of. (As amended, July 29, 1970, Pub. L. 91–358, § 145(n), title I, 84 Stat. 563.)

§ 16–3547. Proceedings against corporate directors and trustees; judgment and order; enforcement

Where a quo warranto proceeding is against a director or trustee of a corporation and the court finds that at his election either illegal votes were received or legal votes rejected, or both, sufficient to change the result if the error is corrected, the court may render judgment that the defendant be ousted, and that the relator, if entitled to be declared elected, be admitted to the office, and the court may issue an order to the proper parties, being officers or members of the corporation, to admit him to the office. The judgment may require the defendant to deliver to the relator all books, papers, and other things in his custody or control pertaining to the office, and obedience to judgment may be enforced by attachment. (As amended, July 29, 1970, Pub. L. 91–358, § 145(n), title I, 84 Stat. 564.)

§ 16–3548. Recovery of damages from usurper; limitation

At any time within a year from a judgment in a quo warranto proceeding, the relator may bring an action against the party ousted and recover the damages sustained by the relator by reason of the ousted party's usurpation of the office to which the relator was entitled. (As amended, July 29, 1970, Pub. L. 91–358, § 145(n), title I, 84 Stat. 564.)

Chapter 37.—REPLEVIN

Sec.

16–3701. Demand prior to action; costs.
16–3702. Form of complaint.
16–3703. Affidavit; contents.
16–3704. Undertaking to abide judgment of the court.
16–3705. Failure of officer to obtain possession; procedure.
16–3706. Publication against defendant.
16–3707. Default.
16–3708. Motion for return of property; procedure; objection to sufficiency of security.
16–3709. Notice to officer of intention to move for return; duty of officer; time of motion.
16–3710. Determination and measure of plaintiff's damages.
16–3711. Judgment for defendant and determination of damages.
16–3712. Verdict where goods are eloigned.
16–3713. Judgment where goods are eloigned.

AMENDMENT

1970—Section 145(o) of Act July 29, 1970, Public Law 91–358, amended chapter 37: (1) by repealing subchapter II; (2) by striking out the heading "SUBCHAPTER I.—GENERAL PROVISIONS"; and (3) by striking out the items relating to subchapter II in the chapter analysis and by striking out "SUBCHAPTER I.—GENERAL PROVISIONS" in that analysis.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 11–921.

§ 16–3706. Publication against defendant

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–3709.

§ 16–3708. Motion for return of property; procedure; objection to sufficiency of security

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–3709.

§§ 16–3731 to 16–3740. Repealed. July 29, 1970, Pub. L. 91–358, section 145(o)(1), title I, 84 Stat. 564

Sections 16–3731 to 16–3740, which were a part of Subchapter II, the Act of Dec. 23, 1963, Pub. L. 88–241 were entitled, "Replevin in Court of General Sessions." They contained provisions dealing with jurisdiction, the form of the complaint, contents of affidavits, undertaking, proceedings upon failure to obtain possession of the property, publication against defendant, proceedings upon default, retention of property by marshal and return thereof, measure of damages and judgment for defendant and determination of damages.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

NOTES TO DECISIONS UNDER PRIOR § 16–3740

Determination of damages

In this case the court held that if the plaintiff, who wrongfully replevied automobile, fails to deliver the automobile back to defendant, the amount of damages sustained by defendant would not necessarily be measured by the unpaid balance of defendant's lien against the automobile, because the automobile's value might not equal that amount; rather, the defendant's damages would have to be computed and judgment therefor entered against the plaintiff and his surety. *T. W. Streule* v. *Gulf Finance Corporation* (D.C. App. 1970, 265 A. 2d 298).

Chapter 39.—SMALL CLAIMS AND CONCILIATION PROCEDURE IN SUPERIOR COURT

AMENDMENT

1970—Section 145(p)(1) of Act July 29, 1970, Public Law 91–358 amended the chapter heading by striking out "COURT OF GENERAL SESSIONS" and inserting in lieu thereof "SUPERIOR COURT".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 13–101.

§ 16–3901. Practice; applicability of other laws and rules of court

All provisions of law relating to the Superior Court of the District of Columbia and the rules of the court apply to the Small Claims and Conciliation Branch of the court as far as they may be applicable and are not in conflict with this chapter or chapter 13 of title 11. In case of conflict, this chapter and chapter 13 of title 11 control. (Dec. 23, 1963, 77 Stat. 608, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, § 145(p)(2), title I, 84 Stat. 564.)

AMENDMENT

1970—Section 145(p)(2) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–3902. Commencement of action; form of statement; preparation by clerk; notice and service; costs; default; memorandum to plaintiff

(a) Actions shall be commenced in the Small Claims and Conciliation Branch by the filing of a statement of claim, in concise form and free of technicalities. The plaintiff or his agent shall verify the statement of claim by oath or affirmation in the form herein provided, or its equivalent, and shall affix his signature thereto. The clerk of the Branch shall, at the request of an individual, prepare the statement of claim and other papers required to be filed in an action in the Branch, but his services are not available to a corporation, partnership, or association, in the preparation of the statements or other papers. A copy of the statement of claim and verification shall be made a part of the notice to be served upon the defendant named therein. The mode of service shall be by the United States marshal, as provided by law, or by registered mail or by certified mail with return receipt, or by a person not a party to or otherwise interested in the action especially appointed by the judge for that purpose.

* * * * *

(e) The statement of claim, verification, and notice shall be in the following or equivalent form:

SUPERIOR COURT OF THE DISTRICT OF COLUMBIA

SMALL CLAIMS AND CONCILIATION BRANCH

(Location of room in courthouse) (Address of court)

Washington, D.C.

Plaintiff

Address
vs.

Defendant
} No. _____

STATEMENT OF CLAIM

(Here the plaintiff, or at his request the clerk, will insert a statement of the plaintiff's claim, and the original, to be filed with the clerk, may, if action is on a contract, express or implied, be verified by the plaintiff or his agent, as follows:)

DISTRICT OF COLUMBIA, *ss:*

_____ being first duly sworn on oath says the foregoing is a just and true statement of the amount owing by defendant to plaintiff, exclusive of all set-offs and just grounds of defense.

_____.
Plaintiff (or agent)

Subscribed and sworn to before me this _____ days of _____, 19___.

_____.
Clerk (or notary public)

NOTICE

To: _____
Defendant

Home address

_____.
Business address

You are hereby notified that _____ has made a claim and is requesting judgment against

you in the sum of _____ dollars ($_____), as shown by the foregoing statement. The Court will hold a hearing upon this claim on _____ at _____m. in the Small Claims and Conciliation Branch (address of Court).

You are required to be present at the hearing in order to avoid a judgment by default.

If you have witnesses, books, receipts, or other writings bearing on this claim, you should bring them with you at the time of the hearing.

If you wish to have witnesses summoned, see the clerk at once for assistance.

If you admit the claim, but desire additional time to pay, you must come to the hearing in person and state the circumstances to the court.

You may come with or without an attorney.

[SEAL] _____

Clerk of the Small Claims and Conciliation Branch, Superior Court of the District of Columbia.

* * * * *

(As amended, July 29, 1970, Pub. L. 91–358, title I, § 145(p)(3), 84 Stat. 564.)

AMENDMENT

1970—Section 145(p)(3) of Act July 29, 1970, Public Law 91–358 amended section (A) by striking out "of the District of Columbia Court of General Sessions" in subsection (a); and

(B) by striking out "District of Columbia Court of General Sessions" and "Court of General Sessions" in the form prescribed by subsection (e) and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–3906.

§ 16–3903. Fees and costs; waiver

The fee for issuing summons and copies, trial judgment, and satisfaction in an action in the Small Claims and Conciliation Branch shall be not more than $1. Other fees shall be as the court prescribes. The judge sitting in the Branch may waive the prepayment of costs or the payment of costs accruing during the action upon the sworn statement of the plaintiff or upon other satisfactory evidence of his inability to pay the costs. When costs are so waived the notation to be made on the records of the Branch shall be "Prepayment of costs waived," or "Costs waived." The term "pauper" or "in forma pauperis" may not be employed in the Branch. If a party fails to pay accrued costs, though able to do so, the judge may deny him the right to file a new case in the Branch while the costs remain unpaid, and likewise deny him the right to proceed further in any case pending in the Branch. (Dec. 23, 1963, 77 Stat. 610, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(p)(4), 84 Stat. 564.)

AMENDMENT

1970—Section 145(p)(4) of Act July 29, 1970, Public Law 91–358 amended section by striking out "of the District of Columbia Court of General Sessions."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–3904. Set-off or counterclaim; pleading; retention of jurisdiction

If the defendant in an action pursuant to this chapter, asserts a set-off or counterclaim, the judge may require a formal plea of set-off to be filed, or may waive the requirement. If the plaintiff requires time to prepare his defense against the counterclaim or set-off, the judge may continue the case for that purpose. When the set-off or counterclaim is for more than the jurisdictional limit of the Small Claims and Conciliation Branch, as provided by section 11–1321, but within the jurisdiction of the Superior Court, the action shall nevertheless remain in the Branch and be tried therein in its entirety. (Dec. 23, 1963, 77 Stat. 610, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(p)(5), 84 Stat. 564.)

AMENDMENT

1970—Section 145(p)(5) of Act July 29, 1970, Public Law 91–358, amended the third sentence of section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–3905. Jury trial; demand; assignment to regular branch

In a case filed or pending in the Small Claims and Conciliation Branch in which a party entitled to a trial by jury files a demand therefor, the case shall be assigned to and tried in the regular branch of the civil division of the Court under the procedure provided for jury trials. (Dec. 23, 1963, 77 Stat. 610, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(p)(4), 84 Stat. 564.)

AMENDMENT

1970—Section 145(p)(4) of Act July 29, 1970, Public Law 91–358 amended section by striking out "of the District of Columbia Court of General Sessions".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–3907. Judgment; stay; installment payments; enforcement

When judgment is to be rendered in an action pursant to this chapter and the party against whom it is to be entered requests it, the judge shall inquire fully into his earnings and financial status and may stay the entry of judgment, and stay execution, except in cases involving wage claims, and order partial paments in such amounts, over such periods, and upon such terms, as seems just in the circumstances and as will assure a definite and steady reduction of the judgment until it is finally and completely satisfied. Upon a showing that the party has failed to meet an installment payment without just excuse, the stay of execution shall be vacated. When a stay of execution has not been ordered or when a stay of execution has been vacated as provided by this section, the party in whose favor the judgment has been entered may avail himself of all remedies otherwise available in the Superior Court of the District of Columbia for the enforcement of the judgment. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(p)(6) 84 Stat. 564.)

AMENDMENT

1970—Section 145(p)(6) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 16–3910. Other rights of judgment creditor

Except as otherwise provided by this chapter or the rules of the court, a party obtaining a judgment in the Small Claims and Conciliation Branch is entitled to the same remedies, processes, costs, and benefits as are given or inure to other judgment creditors in the court. (Dec. 23, 1963, 77 Stat. 611, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 145(p)(7), 84 Stat. 565.)

AMENDMENT

1970—Section 145(p)(7) of Act July 29, 1970, Public Law 91–358 amended section by striking out ", or the rules prescribed pursuant to section 13–101(c)" and inserting in lieu thereof "or the rules of the court" and by striking out "of the District of Columbia Court of General Sessions".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TITLE 17.—REVIEW

Chap. Sec.
3. District of Columbia Court of Appeals..... 17–301

AMENDMENT

1970—Section 146(a)(1) of act July 29, 1970, Pub. L. 91–358, amended the analysis by striking out the item relating to chapter 1.

Chapter 1.—UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Sec.
17–101 to 17–104. Repealed.

§§ 17–101 to 17–104. Repealed. July 29, 1970, Pub. L. 91–358, § 146(a)(1), title I, 84 Stat. 565

Chapter consisting of sections 17–101 to 17–104 being a part of Act Dec. 23, 1963, Pub. L. 88–241, dealt with appeals from judgments of the District of Columbia Court of Appeals and procedures thereon. The matter is now covered by section 11–301.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

NOTES TO DECISIONS UNDER PRIOR § 17–103

Notice of appeal

In this case, the one-day-late notice of appeal from second order in same cause did not preclude Court of Appeals of the District of Columbia Circuit from reaching merits of cause on basis of petition already properly before it. *O. Lee* v. *N. Habib* (1970, 424 F. 2d 891, 137 U.S. App. D.C. 403).

Chapter 3.—DISTRICT OF COLUMBIA COURT OF APPEALS

Sec.
17–301. Applications for allowance of appeals from certain Superior Court judgments; hearing; effect of denial.
17–303. Appeals from administrative orders and decisions.

AMENDMENT

1970—Section 146(a)(2)(B) and (3)(B) of Act July 29, 1970, Public Law 91–358 amended section analysis relating to items 17–301 and 17–303 to read as above set out.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 17–301. Applications for allowance of appeals from certain Superior Court judgments; hearing; effect of denial

(a) The application for the allowance of an appeal from a judgment of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia, or from a judgment of the criminal division of that court where the penalty imposed is less than $50, provided for by section 11–721(c), shall be on a standard form, in simple language, prescribed by the Superior Court of the District of Columbia. If the appellant is not represented by counsel, the clerk of the Superior Court of the District of Columbia shall prepare the application in his behalf.

(b) The application provided for by subsection (a) of this section shall be filed in the District of Columbia Court of Appeals within the time limit prescribed by section 17–307(b), and shall be promptly presented by the clerk of that court to three judges thereof for their consideration. When any one of them is of the opinion that the appeal should be allowed, the appeal shall be recorded as granted, and the case set down for hearing on appeal. It shall be given a preferred status on the calendar, and heard in the same manner as other appeals in the court. When the three judges are of the opinion that the appeal should be denied, the denial shall stand as an affirmance of the judgment of the trial court, and there shall be no further appeal. (Dec. 23, 1963, 77 Stat. 613, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; Dec. 8, 1967, Pub. L. 90–178, § 2, 81 Stat. 545; July 29, 1970, Pub. L. 91–358, Title I, §§ 146(a)(2)(A), 155(a), 84 Stat. 565, 570.)

AMENDMENTS

1970—Section 146(a)(2)(A)(i) of Act July 29, 1970, Public Law 91–358, amended section heading by striking out "Court of General Sessions" and inserting in lieu thereof "Superior Court."

Section 146(a)(2)(A)(ii)(iii) of Act July 29, 1970, Public Law 91–358 amended subsec. (a) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia" and by striking out "section 11–741(c)" and inserting in lieu "section 11–721(c)".

Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (a) by striking out references to "Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

1967—Section 2, Act Dec. 8, 1967, Pub. L. 90–178, amended subsection (b) as follows:

(1) In the first sentence struck out the words, "the chief judge and the associate judges" and inserted in lieu the words, "three judges".

(2) In the fourth sentence struck out the words, "all the judges are of the opinion that an" and inserted in lieu "the three judges are of the opinion that the".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

§ 17–303. Appeals from administrative orders and decisions

An appeal from an order or decision as provided for in section 11–722, is commenced by filing, within the time prescribed pursuant to section 17–307(a), the written petition for review provided by section 11 of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1–1510). The District of Columbia Court of Appeals may prescribe the necessary rules and procedures for review of administrative orders and decisions, consistent with such section 11. (Dec. 23, 1963, 77 Stat. 614, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, § 146(a)(3)(A), title I, 84 Stat. 565.)

AMENDMENT

1970—Section 146(a)(3)(A) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 17–304.

§ 17–304. Stay upon application for review of, or pending appeal from, administrative order or decision

(a) An application for review, or pendency of an appeal, provided for by section 17–303, does not operate as a stay of the order or decision from which the appeal is taken:

(1) in any case where, under existing law, a stay may not be granted; or

(2) in any other case unless so ordered by the Commissioner or Council of the District of Columbia, by the independent agency, or by the District of Columbia Court of Appeals as provided by subsection (b) of this section.

(b) For good cause shown, and upon such conditions as may be required and to the extent necessary to prevent irreparable injury, the court may take appropriate and necessary action to preserve the status or rights pending conclusion of the review proceedings provided for by section 17–303. (Dec. 23, 1963, 77 Stat. 614, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 146(a)(4), 84 Stat. 565.)

AMENDMENT

1970—Section 146(a)(4) of Act July 29, 1970, Public Law 91–358 amended section by striking out "Board of Commissioners" and inserting in lieu thereof "Commissioner or Council" and by inserting after "District of Columbia," the first time it appears the following: "by the independent agency,".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 17–305. Scope of review

(a) In considering an order or judgment of a lower court (or any of its divisions or branches) brought before it for review, the District of Columbia Court of Appeals shall review the record on appeal. When the issues of fact were tried by jury, the court shall review the case only as to matters of law. When the case was tried without a jury, the court may review both as to the facts and the law, but the judgment may not be set aside except for errors of law unless it appears that the judgment is plainly wrong or without evidence to support it.

(b) The provisions of section 11 of the District of Columbia Administrative Procedure Act (D.C. Code, sec. 1–1510) shall apply with respect to review by the District of Columbia Court of Appeals of an order or decision under that Act. (Dec. 23, 1963, 77 Stat. 614, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, § 146(a)(5), title I, 84 Stat. 565.)

REFERENCE IN TEXT

The "Act" referred to in text is set out in title 1, ch. 15 in the D.C. Code.

AMENDMENT

1970—Section 146(a)(5) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS

Abuse of discretion

An award of alimony under section 16–913 when divorce is granted upon husband's application will not be disturbed, unless an abuse of discretion is made manifest by the record. *M. L. Majette* v. *M. Majette* (D.C. App. 1970, 261 A. 2d 824).

An award of $35 per week for the support and maintenance of wife who was in poor health, incapable of working, had no source of income or other property and who had been married to husband for 26 years, and of two minor children of marriage by husband with salary of approximately $13,400 per year and who admitted by his pleadings and testimony that the wife needed at least $250 per month to support herself and two children did not constitute an exercise of sound discretion. *Id.*

Authority of appellate court

On an appeal from a judgment awarding absolute divorce, function of the court of appeals is limited to reviewing the record and the court of appeals may not disturb trial court's ultimate findings and conclusions unless they are clearly erroneous or without evidence to support them. *S. W. Springer* v. *R. C. Springer* (D.C. App. 1969, 248 A. 2d 822).

Credibility of witnesses on review

Credibility of witnesses, upon which the validity of the arrest stands or falls in this case, was a matter within the province of the jury to decide as trier of fact. *R. G. Burroughs* v. *United States and District of Columbia* (D.C. App. 1967, 236 A. 2d 319).

Evidence—Sufficiency

In this case, the court held that substantial evidence, including officer's testimony that petitioner stopped his vehicle in fast lane and that petitioner exhibited usual symptoms of intoxication, supported finding that petitioner showed flagrant disregard for safety of persons and property; and thus, order suspending petitioner's operator's permit for period between his arrest and trial would be allowed to stand. *J. M. Hoard* v. *W. D. Heath, Director, etc.* (D.C. App. 1970, 266 A. 2d 926).

Since the trial court's findings of fact are supported by substantial evidence and are not clearly erroneous, they will be accepted on appeal. *J. W. Curtis Co., Inc.* v. *District-Realty Title Insurance Corporation* (D.C. App. 1970, 267 A. 2d 830).

The finding of the trial court that divorced parties to support dispute had never agreed to reduce husband's support payment after one of two children became 21 was not clearly erroneous. *J. G. Rhodes* v. *P. W. Williams et al.* (D.C. App. 1970, 264 A. 2d 497).

The court held that in this case the evidence in suit by automobile purchaser for breach of warranty was insufficient to support finding that upper ball joints, replaced by garage not authorized by manufacturer, were defective, and finding was clearly erroneous. *Ford Motor Company, Inc.* v. *W. L. Keating* (D.C. App. 1970, 262 A. 2d 601).

The finding of the trial court in action against the employer that former employee whose employment had been terminated without notice was entitled to recover shortages in back pay from employer but was not entitled to a bonus or to two weeks' separation pay was supported by evidence. *H. T. Freas* v. *N. M. Gitomer* (D.C. App. 1969, 256 A. 2d 573).

The finding of the trial court that parking lot was liable for damages to patron's automobile was supported by substantial evidence and was not clearly erroneous, and this is the limit of the scope of court's review. *Parking Management, Inc.* v. *N. C. Pride* (D.C. App. 1969, 256 A. 2d 899).

The finding of the trial court that lessee terminated lease prematurely by announcing it had no further need for the car and returning it to lessor was supported by substantial evidence and was not clearly erroneous. *Stone Heating & Ventilating Co., Inc.* v. *Anacostia Leasing Corp.* (D.C. App. 1969, 256 A. 2d 923).

In this case, the court held that there was substantial evidence to support the hearing officer's finding that the operator involved in an accident had been driving under influence of alcohol and hearing officer's resulting restric-

tion of operator's permit, though operator apparently suffered head injury which he claimed was cause of confusion and slow reaction. *D. T. Griffin* v. *W. D. Heath, Director etc.* (D.C. App. 1969, 257 A. 2d 488).

The record in this case authorized finding that plaintiff had not sustained burden of proof by preponderance of evidence that deceased in fact orally promised to repay sums of money paid to or on behalf of deceased during her life. *B. M. Johns* v. *W. M. Speed etc.* (D.C. App. 1969, 257 A. 2d 497).

Evidence, in divorce action, sustained finding that husband had not committed any acts of cruelty against wife or otherwise by his actions contributed to their separation. *S. W. Springer* v. *R. C. Springer* (D.C. App. 1969, 248 A. 2d 822).

Nature of defense of usury

Usury as a defense attacks the original transaction as not bona fide and denies assignee of note the status of holder in due course. *Universal Acceptance Corporation* v. *F. Marzullo et ano.* (D.C. App. 1969, 260 A. 2d 90).

Photographic evidence

Photographs of curb condition which caused one plaintiff to fall and sustain injuries were sufficient basis for trial court sitting without jury to infer constructive notice by the District of Columbia and supported recovery on part of plaintiffs. *District of Columbia* v. *R. Megginson et ano.* (D.C. App. 1969, 250 A. 2d 571).

Questions of fact

Court of appeals may not reverse trial court sitting without a jury on factual matters unless it appears that judgment is plainly wrong or without evidence to support it. *$3,265.28 in United States Currency, et al.* v. *District of Columbia* (D.C. App. 1969, 249 A. 2d 516).

On appeal from my jury's verdict, issues of fact must be resolved in appellee's favor. *E. L. Prather* v. *J. B. Hill* (D.C. App. 1969, 250 A. 2d 690).

Scope of review

The function of review, on appeal from grant of summary judgment of dismissal, precludes conduct of trial de novo and court is confined to review of record on appeal. *M. T. Harmatz* v. *Zenith Radio Corporation* (D.C. App. 1970, 265 A. 2d 291).

Scope of review of Court of Appeals in negligence case is to determine whether trial court's finding was supported by substantial evidence and was not clearly erroneous. *C. Parello, etc., et al.* v. *A. C. Lomax* (D.C. App. 1969, 253 A. 2d 463).

Sufficiency of evidence to sustain verdict

In suit by a sociologist to recover payment for services performed at defendant's request, the jury's verdict was supported by the record that she had prepared a research prospectus for compensation at defendant's request, and that defendant had refused to pay reasonable compensation for her work, and was not clearly erroneous, even though there was conflicting evidence. *D. C. Thompson, t/a Associated etc.* v. *J. Jackson* (D.C. App. 1969, 256 A. 2d 408).

The testimony of defendant that plaintiff offered to install snow guards on roof of church building without charge as part of promotional scheme established a substantial basis for finding that no purchase contract, express or implied, was formed between parties. *J. Zaleski, t/a etc.* v. *Congregation of the Sacred Hearts of Jesus and Mary etc.* (D.C. App. 1969, 256 A. 2d 424).

In case where boat owner was attempting to sell his boat for $40,000 and told broker that if broker sold the boat, he would be paid, the broker was entitled to commission when the boat was sold to a buyer who had been procured by broker, though boat was sold for $27,500, after negotiations between boat owner and buyer. *W. L. Bowles* v. *T. R. Hogans, Jr.* (D.C. App. 1969, 256 A. 2d 407).

Tainted transaction

The court held, that in this case the working arrangement between the conditional seller of television set and the assignee of purchasers' note was tainted such that it bore a "badge of fraud" and supported trial judge's ruling in suit by assignee on note that the note was usurious and that assignee could not be given status of holder in due course. *Universal Acceptance Corporation* v. *F. Marzullo et ano.* (D.C. App. 1969, 260 A. 2d 90).

Transcript

A request for a free transcript must first be made to the trial judge who may appropriately keep in mind that any parts of trial proceedings unnecessary to resolution on appeal of discernible substantial questions should not be ordered. *J. McKelton* v. *J. E. Bruno* (D.C. App. 1970, 264 A. 2d 493).

Validity of findings

Evidence was substantial on the question of a dry basement and a finding that guarantee clause of home improvement contract, which provided that contractor would furnish all labor and material to break up and replace floors around basement walls, install drain tile, gravel and pump and that work was guaranteed for five years, warranted a dry basement and was not plainly wrong. *K. L. Fowler and F. D. Fowler* v. *A & A Company and W. R. O'Roark etc.* (D.C. App. 1970, 262 A. 2d 344).

§ 17–306. Determination of appeals

The District of Columbia Court of Appeals may affirm, modify, vacate, set aside or reverse any order or judgment of a court or any division or branch thereof, or any administrative order or decision, lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate order, judgment, or decision, or require such further proceedings to be had, as is just in the circumstances. (Dec. 23, 1963, 77 Stat. 615, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 146(a)(6), 84 Stat. 565.)

AMENDMENT

1970—Section 146(a)(6) of Act July 29, 1970, Public Law 91–358 amended section by striking out "branch" and inserting in lieu thereof "division or branch" and by striking out "order or decision of an administration agency" and inserting in lieu thereof "administrative order or decision".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS

Judgment of recovery against garnishee

In this case where garnishee appeared and opposed, the motion on jurisdictional grounds, the judgment creditor's motion for judgment of recovery, though garnishee had previously failed to answer the interrogatories, and where the garnishee alleged that nothing was owed to judgment debtor when writs were received and that judgment debtor thereafter left his job with garnishee, judgment of recovery should not be entered if, on further proceedings, it is shown that no additional wages became due judgment debtor from garnishee between receipt of writs and termination of debtor's employment and if there were otherwise cause to permit answer to be filed. *Metropolitan Roofing and Sheet Metal Co., Inc.* v. *Franklin Investment Co., Inc.* (D.C. App. 1969, 256 A. 2d 913).

Nature of defense of usury

Usury as a defense attacks the original transaction as not bona fide and denies assignee of note the status of holder in due course. *Universal Acceptance Corporation* v. *F. Marzullo et ano.* (D.C. App. 1969, 260 A. 2d 90).

Tainted transaction

The court held, that in this case the working arrangement between the conditional seller of television set and the assignee of purchasers' note was tainted such that it bore a "badge of fraud" and supported trial judge's ruling in suit by assignee on note that the note was usurious and that assignee could not be given status of holder in due course. *Universal Acceptance Corporation* v. *F. Marzullo et ano.* (D.C. App. 1969, 260 A. 2d 90).

§ 17–307. Time for taking or applying for allowance of appeals

(a) Except as provided by subsection (b) of this section, the time during which an appeal may be

taken pursuant to section 11–721 or 11–722 may be fixed by rules of the District of Columbia Court of Appeals.

(b) Applications for the allowance of appeals from judgments of the Small Claims and Conciliation Branch of the Superior Court of the District of Columbia, and from judgments in the criminal division of that court where the penalty imposed is less than $50, specified by section 11–721(c), shall, in each case, be filed in the District of Columbia Court of Appeals within three days from the date of judgment. (Dec. 23, 1963, 77 Stat. 615, Pub. L. 88–241, § 1, eff. Jan. 1, 1964; July 29, 1970, Pub. L. 91–358, title I, § 146(a)(7), 84 Stat. 565.)

AMENDMENT

1970—Section 146(a)(7) of Act July 29, 1970, Public Law 91–358 amended section by striking out "section 11–741 or 11–742" in subsection (a) and inserting in lieu thereof "section 11–721 or 11–722", by striking out "District of Columbia Court of General Sessions" in subsection (b) and inserting in lieu thereof "Superior Court of the District of Columbia", and by striking out "section 11–741(c)" in subsection (b) and inserting in lieu thereof "section 11–721(c)".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 11–767) is referred to in sections 17–301, 17–303.

PART III

DECEDENTS' ESTATES AND FIDUCIARY RELATIONS

TITLE 18. WILLS AND PROBATE OF WILLS.
TITLE 19. DESCENT AND DISTRIBUTION.
TITLE 20. ADMINISTRATION OF DECEDENTS' ESTATES.
TITLE 21. FIDUCIARY RELATIONS AND THE MENTALLY ILL.

TITLE 18.—WILLS AND PROBATE OF WILLS

Chapter 1.—GENERAL PROVISIONS

§ 18–101. Definitions

As used in this title, unless the context requires a different meaning:

words importing the singular include the plural, and words importing the plural include the singular;

words importing the masculine gender include all genders;

the present tense includes the future as well as the present;

"District Court" means the United States District Court for the District of Columbia; and

"Probate Court" and "court", respectively, mean the Superior Court of the District of Columbia. (Sept. 14, 1965, 79 Stat. 685, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 147(1), 84 Stat. 566.)

AMENDMENT

1970—Section 147(1) of Act July 29, 1970, Public Law 91–358, amended the last paragraph of section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 15–707.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–101.

§ 18–102. Capacity to make a will

NOTES TO DECISIONS

Capacity to make a will

Provision in section 21–1507 voiding transfer of real and personal property by person subject to conservatorship, does not render that person, per se, incapable of making valid will. *D. H. Rossi* v. *E. A. Fletcher* (1969, 418 F. 2d 1169, 135 U.S. App. D.C. 333, cert. denied 90 S. Ct. 568).

Congress in adopting provisions in section 18–102 that will was not valid unless person making it was of required age and at time of executing or acknowledging it was of sound and disposing mind and capable of executing valid deed or contract did not intend to deprive mentally competent person of testamentary capacity merely because he was subject to conservatorship. *Id.*

§ 18–103. Execution of written will; attestation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18–105, 18–109.

NOTES TO DECISIONS

Parol Evidence

A litigant may not furnish by parol those features of testament for which the wills statute demands peculiarly formalized writing. *In re Estate of Kerr* (1970, 433 F. 2d 479, — U.S. App. D.C. —).

§ 18–107. Nuncupative wills

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18–103, 18–109.

§ 18–109. Revocation of wills; revival

NOTES TO DECISIONS

Copies of former wills

The court held that it is the clear import of existing statutes, that copies of former wills, whether executed or unexecuted, must be made available to the court under threat of criminal penalty. *C. H. Doherty, Sr., et al.* v. *V. Fairall et al.* (1969, 413 F. 2d 381, 134 U.S. App. D.C. 107).

§ 18–111. Withholding will

NOTES TO DECISIONS

Copies of former wills

The court held that it is the clear import of existing statutes, that copies of former wills, whether executed or unexecuted, must be made available to the court under threat of criminal penalty. *C. H. Doherty, Sr., et al.* v. *V. Fairall et al.* (1969, 413 F. 2d 381, 134 U.S. App. D.C. 107).

§ 18–112. Taking and carrying away, or destroying, mutilating, or secreting will

NOTES TO DECISIONS

Copies of former wills

The court held that it is the clear import of existing statutes, that copies of former wills, whether executed or unexecuted, must be made available to the court under threat of criminal penalty. *C. H. Doherty, Sr., et al.* v. *V. Fairall et al.* (1969, 413 F. 2d 381, 134 U.S. App. D.C. 107).

Chapter 3.—DEVISES AND BEQUESTS

§ 18–308. Death of devisee or legatee; lapsed or void devises or bequests

NOTES TO DECISIONS

Construction

This section is to be interpreted liberally with view to attainment of its beneficent objectives and, to render section inoperative, a purpose inconsistent with that objective must fairly appear and from terms of will itself but, where will reflects a countervailing intention with reasonable clarity, this section does not save gift from lapse. *In re Estate of Kerr* (1970, 433 F. 2d 479, — U.S. App. D.C. —).

Countervailing intention that testamentary gift should lapse is manifested when the will articulates gift in words effectively conditioning its efficacy on beneficiary's survival of testator, and antilapse statute has no application to gifts limited to vest on beneficiary's survival of testator and not otherwise, whether gift is to single or to multiple beneficiaries and whether there is or is not a limitation over to another on death of primary beneficiary during lifetime of testator. *Id.*

Words referable to survivorship do not necessarily condition a testamentary gift and the construction properly to be placed on survivorship language is a product of testorial intention. *Id.*

This section applies to gifts of residuum as well as to other devises and bequests contained in will. *Id.*

Intent

Testorial intention is important under this section, which may operate to avoid a lapse unless different disposition is made or required by the will. *In re Estate of Kerr* (1970, 433 F. 2d 479, — U.S. App. D.C. —).

Provision of will specifying that residuum was to be divided equally between two named beneficiaries if they were both living at time of testatrix' demise and alternatively, if one predeceased testatrix, then all of estate was to go to one remaining expressed intent contrary to antilapse statute and the death of both beneficiaries during testatrix' lifetime caused the residuary clause to lapse. *Id.*

Chapter 5.—PROBATE OF WILLS

Sec.
18–513. Rules of procedure.

AMENDMENT

1970—Section 147(3)(B) of Act July 29, 1970, Public Law 91–358 amended chapter analysis relating to item 18–513 to read as above set out.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 18–501. Notice of petition for probate

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18–502, 18–504.

§ 18–502. Notice to nonresidents and unfound residents

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18–501, 18–503, 18–504.

§ 18–503. Notice to unknown kin or heirs at law

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 18–501, 18–504.

§ 18–505. Proof of wills; testimony; witnesses outside District

* * * * *

(d) The rules of the court with respect to the taking and use of testimony of out-of-District witnesses apply to testimony taken pursuant to this section. The original will or codicil shall be sent with the notice or order of appointment or commission or letters rogatory, and exhibited to the witnesses. (As amended July 29, 1970, Pub. L. 91–358, title I, § 147(2), 84 Stat. 566.)

AMENDMENT

1970—Section 147(2) of Act July 29, 1970, Public Law 91–358, amended subsection (d) to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 18–508. Caveat; will not to be probated while issues pending

NOTES TO DECISIONS

Caveat by executor

Executor appointed by will who had power of appointment regarding certain property had the requisite interest to caveat codicil reducing shares of residuary legatees. *E. McLain* v. *American Security and Trust Co.* (1968, 392 F. 2d 818, 129 U.S. App. D.C. 213).

Party in interest

The right conferred upon nephew by will and withdrawn from him by codicil to serve as executor and receive commissions therefor did not make him a "party in interest" within District of Columbia Code provision that if a party in interest files verified caveat setting forth facts inconsistent with validity of will, the will may not be admitted to probate until the issues are determined. *P. McLain and E. McLain* v. *American Security and Trust Co.* (1967, 265 F. Supp. 467; rev'd 392 F. 2d 818).

Testatrix' sister whose claim upon estate would be no different if codicil were set aside or sustained was not entitled to caveat the codicil under District of Columbia Code provision that if party in interest files verified caveat setting forth facts inconsistent with validity of will the will may not be admitted until the issues are determined. *Id.*

An estate of a decedent should not be subjected to the trouble and expense of an attack on a testamentary writing except by one who, if the attack prove successful, would have some claim upon the estate different from what he would have if the attack prove unsuccessful. *Id.*

§ 18–513. Rules of procedure

The court shall prescribe rules of procedure governing the trial of issues when a caveat is filed, including provisions for notice, appointment of guardians ad litem, trial by jury, and effect of judgments. (Sept. 14, 1965, 79 Stat. 692, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358 § 147(3)(A), title I, 84 Stat. 566.)

AMENDMENTS

1970—Section 147(3)(A) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TITLE 19.—DESCENT AND DISTRIBUTION

Chapter 1.—RIGHTS OF SURVIVING SPOUSE AND CHILDREN

Sec.
19–115. Definition.

AMENDMENT

1970—Section 148(2)(B) of Act July 29, 1970, Public Law 91–358 amended chapter analysis by adding the item relating to 19–115.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 19–101. Family allowance; construction; penalties

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20–1325, 20–1705, 20–2101.

§ 19–102. Dower; quarantine; curtesy abolished

SECTION REFERRED TO IN OTHER SECTIONS

This section (formerly 18–201a) is referred to in sections 19–106, 30–201.

§ 19–112. Devise or bequest to spouse

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 19–113.

§ 19–113. Renunciation of devises and bequests; election; time limitations; renunciation or election by guardian or fiduciary; maximum rights; effect of no devise or bequest or if nothing passes under either; antenuptial or postnuptial agreements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 19–114.

NOTES TO DECISIONS

Claims of creditors against spendthrift trust

In a case involving the beneficiary of a spendthrift trust, the court held that the primary purpose of such a trust was to assure that the beneficiary will be provided for, independent of his own improvidence and not necessarily to immunize the income therefrom for the necessities of life. *American Security and Trust Co.* v. *F. Utley* (1967, 382 F. 2d 451, 127 U.S. App. D.C. 235).

Equitable apportionment of estate taxes

Purpose of the marital deduction provision does not modify meaning of District of Columbia statute whereby dissenting widow can take one-third of surplus after debts, and hence the amount of property received by widow's election, and thus the amount eligible for marital deduction, was a portion of the surplus remaining after deducting entire amount of estate taxes, in view of District of Columbia rule rejecting doctrine of general equitable apportionment of estate taxes. *R. H. DelMar et al.* v. *United States* (1968, 390 F. 2d 466, 129 U.S. App. D.C. 51).

Congress adopted the marital deduction to provide opportunity for equalization of the tax treatment of estates in common law and community property states. *Id.*

§ 19–114. Rights of surviving spouse if there is no renunciation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 19–112, 19–113.

§ 19–115. Definition

For purposes of this chapter "Probate Court" means the Superior Court of the District of Columbia. (Added, July 29, 1970, Pub. L. 91–358, § 148 (2) (A) title I, 84 Stat. 566.)

AMENDMENT

1970—Section 148(2)(A) of Act July 29, 1970, Public Law 91–358, amended chapter by adding the above section.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 15–707.

Chapter 3.—INTESTATES' ESTATES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 20–1328, 20–1901, 20–2102.

§ 19–301. Course of descents generally

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14–504, 19–114, 19–317.

§ 19–302. When surviving spouse entitled to whole

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14–504, 19–114.

§ 19–303. When surviving sponse entitled to one-third

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 14–504, 19–114.

NOTES TO DECISIONS

Equitable apportionment of estate taxes

Purpose of the marital deduction provision does not modify meaning of District of Columbia statute whereby dissenting widow can take one-third of surplus after debts, and hence the amount of property received by widow's election, and thus the amount eligible for marital deduction, was a portion of the surplus remaining after deducting entire amount of estate taxes, in view of District of Columbia rule rejecting doctrine of general equitable apportionment of estate taxes. *R. H. DelMar et al.* v. *United States* (1968, 390 F. 2d 466, 129 U.S. App. D.C. 51).

Congress adopted the marital deduction to provide opportunity for equalization of the tax treatment of estates in common law and community property states. *Id.*

§ 19–304. When surviving spouse entitled to one-half

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 19–114.

NOTES TO DECISIONS

Federal estate tax marital deduction

Where decedent died intestate survived by her husband, two grandnephews, and six nieces, and surviving husband was entitled to one-half of estate under District of Columbia law, and such one-half qualified for federal estate tax marital deduction, share of husband was not to bear any part of federal estate tax. *In the Matter of the Estate of F. W. Collins* (1967, 269 F. Supp. 633).

§ 19–319. Advancements

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 19–307.

Chapter 7.—ESCHEAT

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 20–1328, 20–1901.

§ 19–701. Escheatment generally

Where there is no surviving spouse or relations of the intestate within the fifth degree, reckoned by counting down from the common ancestor to the more remote, the surplus of real and personal property escheats to the District of Columbia to be used by the Commissioner of the District of Columbia for the benefit of the poor. (Sept. 14, 1965, 79 Stat. 701, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 148(1), 84 Stat. 566.)

AMENDMENT

1970—Section 148(1) of Act July 29, 1970, Public Law 91–358 amended section by striking out "Commissioners" and inserting "Commissioner".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 1–906, 19–305.

NOTES TO DECISIONS

Descent and distribution

On the basis of the majority rule in the District, testator's attempt to disinherit his caveator brothers and their heirs was ineffective, since he made no gift over of the forfeited estate. *J. C. Wilkes, Trustee etc.* v. *E. L. Freer et al.* (1967, 271 F. Supp. 602).

TITLE 20.—ADMINISTRATION OF DECEDENTS' ESTATES

Chapter 3.—EXECUTORS AND ADMINISTRATORS

SUBCHAPTER I.—EXECUTORS

§ 20–301. Letters testamentary; oath; corporations

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–306.

NOTES TO DECISIONS

Refusal of letters to nominated executors

Probate court may refuse letters testamentary to nominated executors only when they are expressly disqualified by statute. *H. M. Berryman et al.* v. *The Riggs National Bank, etc.* (1968, 401 F. 2d 993, 131 U.S. App. D.C. 42).

Compliance with statute relating to competency of person to serve as executor is what is contemplated by the terms "legally competent" as used in statute requiring issuance of letters testamentary to executor named in will if he is legally competent. *Id.*

Testator's choice

Testator's choice should be granted letters testamentary unless he is disqualified under statute relating to competency of person to serve as executor or administrator. *H. M. Berryman et al.* v. *The Riggs National Bank, etc.* (1968, 401 F. 2d 993, 131 U.S. App. D.C. 42)

§ 20–302. Bond of executor

Before letters testamentary are issued to an executor, other than a local corporation authorized by the laws of the District of Columbia to act as an executor, named in a will or codicil, he shall execute a bond, with security to be approved by the court, in such penalty as the court requires, with a condition that he will administer according to law and to the will of the testator all his goods, chattels, rights, credits, and the proceeds of all his real estate that may be sold for the payment of his debts or legacies, which, at any time, come to his possession or to the possession of another person for him, and in all other respects faithfully perform the trusts reposed in him. (Sept. 14, 1965, 79 Stat. 703, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 149(1), 84 Stat. 566.)

AMENDMENT

1970—Section 149(1) of Act July 29, 1970, Public Law 91–358 amended section by striking out "to the United States".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20–301, 20–304.

§ 20–303. Bonds for debts only; removal of executor for waste

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20–304, 20–353.

§ 20–304. Special bond of executor

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20–333, 20–353, 20–701, 20–702.

§ 20–312. Forms of letters testamentary

The following is the form of letters testamentary to be issued under the seal of the Probate Court:

District of Columbia:

The United States of America.

To all persons to whom these presents come, greeting:

The last will and testament of ———, of ———, deceased, in due form of law, has been exhibited, proved, and recorded in the office of the Register of Wills of the District of Columbia, a copy of which is annexed to these presents, and administration of all the goods, chattels, and credits of the deceased is hereby granted unto ————————, the executor appointed by the will.

Witness [A B], the Chief Judge of the Superior Court of the District of Columbia, this ———— day of ————————.

Test:

[C D], Register of Wills.

(Sept. 14, 1965, 79 Stat. 705, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 149(2), 84 Stat. 566.)

AMENDMENT

1970—Section 149(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out in the form referred to therein "the Chief Judge of the United States District Court for the District of Columbia" and inserting in lieu thereof "the Chief Judge of the Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 15–707.

SUBCHAPTER II.—ADMINISTRATORS

§ 20–332. Oath and bond of administrator

(a) Before an administrator, other than a local corporation authorized by the laws of the District of Columbia to act as administrator, enters upon his duties, he shall:

(1) take and subscribe an oath similar to that prescribed for executors; and

(2) file in the Probate Court his bond, with security approved by the court, in such penalty as the court requires, with condition to administer according to law all the money, goods, chattels, rights, and credits of the deceased, and in all other respects perform the trust reposed in him.

(b) If the court orders the sale of the decedent's real estate, the administrator, other than a local corporation authorized by the laws of the District of Columbia to act as administrator, shall give a like bond conditioned to administer the proceeds from the real estate that may be sold for the payment of the decedent's debts which come into his possession or to the possession of another person for him.

(Sept. 14, 1965, 79 Stat. 705, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 149(1), 84 Stat. 566.)

AMENDMENT

1970—Section 149(1) of Act July 29, 1970, Public Law 91–358 amended subsection (a)(2) by striking out "to the United States".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–333.

§ 20–333. Special bond in intestacy

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20–353, 20–701, 20–702.

§ 20–334. Persons entitled to administer; order of preference

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–339.

§ 20–337. Form of letters of administration

The following is the form of letters of administration to be issued under the seal of the Probate Court:
District of Columbia:

The United States of America.

To all persons to whom these presents come, greeting:

Administration of the goods, chattels, and credits of ————, late of ———— deceased, is hereby granted unto ———, of ————.

Witness [A B], the Chief Judge of the Superior Court of the District of Columbia.

Test:

[C D], Register of Wills.

(Sept. 14, 1965, 79 Stat. 707, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 149(2), 84 Stat. 337.)

AMENDMENT

1970—Section 149(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out in the form referred to therein "the Chief Judge of the United States District Court for the District of Columbia" and inserting in lieu thereof "the Chief Judge of the Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 15–707.

SUBCHAPTER III.—MISCELLANEOUS PROVISIONS RELATING TO EXECUTORS AND ADMINISTRATORS

§ 20–351. Competency to serve as executor or administrator; determination

(a) Letters testamentary or of administration may not be granted to a person who:

(1) has been convicted of an infamous offense; or

(2) is a mentally-ill person, as defined by section 21–501; or

(3) under conservatorship as defined in section 21–1501; or

(4) is under 18 years of age; or

(5) is an alien.

(b) The Probate Court shall determine all questions as to the disqualification, on any of the grounds specified by subsection (a) of this section, of persons claiming to be entitled to letters testamentary or of administration, after such notice to them as the court directs. (Sept. 14, 1965, 79 Stat. 708, Pub. L. 89–183, $ 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 149(3), 84 Stat. 566.)

AMENDMENT

1970—Section 149(3) of Act July 29, 1970, Public Law 91–358 amended subsection (a)(2) by striking out "an insane person" and inserting in lieu "a mentally-ill person".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS

Refusal of letters to nominated executors

Probate court may refuse letters testamentary to nominated executors only when they are expressly disqualified by statute. *H. M. Berryman et al.* v. *The Riggs National Bank etc.* (1968, 401 F. 2d 993, 131 U.S. App. D.C. 42).

Compliance with statute relating to competency of person to serve as executor is what is contemplated by the terms "legally competent" as used in statute requiring issuance of letters testamentary to executor named in will if he is legally competent. *Id.*

Testator's choice

Testator's choice should be granted letters testamentary unless he is disqualified under statute relating to competency of person to serve as executor or administrator. *H. M. Berryman et al.* v. *The Riggs National Bank etc.* (1968, 401 F. 2d 993, 131 U.S. App. D.C. 42).

§ 20–359. Accounting by representative of deceased executor or administrator; enforcement

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–1710.

§ 20–364. Recordation of executor's and administrator's bond; copies to interested parties; actions on bonds

(a) The Register of Wills shall record in his office every bond executed by an executor or administrator. The Register of Wills shall deliver, on demand, to a person conceiving himself to be interested in the administration of the estate, a copy of the bond, under his hand and seal. Upon this copy, an action may be maintained, in the name of the District of Columbia, for the use of the party interested. In the action, judgment may be recovered for the damage actually sustained.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 149(4), 84 Stat. 566.)

AMENDMENT

1970—Section 149(4) of Act July 29, 1970, Public Law 91–358 amended subsection (a) by striking out "in the name of the United States" and inserting in lieu thereof "in the name of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 15–707.

Chapter 5.—COLLECTORS

§ 20–501. Letters of collection, or ad colligendum

* * * * *

(b) The form of letters of collection is as follows:
To all persons to whom these presents come, greeting:

Whereas ———, of ————, deceased, had, as is said, at his decease, personal property within the District of Columbia, administration whereof can not immediately be granted, but which, if speedy care be not taken, may be lost, destroyed, or

diminished, to the end that the same may be preserved for those who may appear to have a legal right or interest therein, we do hereby request and authorize ———, of ———, to secure and collect the property, wheresoever the same may be, in the District, whether goods, chattels, debts, or credits, and to make a true inventory thereof and exhibit it with all convenient speed, with an account of his collections, into the office of the Register of Wills.

Witness [A B], the Chief Judge of the Superior Court of the District of Columbia.

Test: [C D], Register of Wills.

(As amended July 29, 1970, Pub. L. 91–358, title I, § 149(2), 84 Stat. 566.)

AMENDMENT

1970—Section 149(2) of Act July 29, 1970, Public Law 91–358 amended subsection (b) by striking out in the forms referred to therein "the Chief Judge of the United States District Court for the District of Columbia" and inserting in lieu thereof "the Chief Judge of the Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 15–707.

§ 20–502. Oath and bond of collector; form

(a) Before letters are issued to a collector other than a local corporation authorized under the laws of the District of Columbia to act as collector, he shall take and subscribe the following oath:

"I, ———, do swear that I will well and truly discharge the office of collector of the personal estate of ———, deceased, according to the tenor of the letters granted me by the Probate Court and the directions of law, to the best of my knowledge, so help me God.".

(b) The collector shall also, before letters are issued to him, execute a bond, in a penalty and with security to be approved by the court, with the following condition: "The condition of the above obligation is such that if the above bounden ——— shall well and honestly discharge the office of collector of the personal estate of ———, deceased, in the District of Columbia, and shall make or cause to be made a true and perfect inventory or inventories of such of the personal estate, and debts as come to his possession or knowledge and make return of them to the Probate Court, and shall also deliver to the person or persons who shall be authorized by the court to receive them such of the goods, chattels, personal estate, and debts as shall come to his possession, except such as shall be allowed for by the court, then the obligation shall be void; it shall otherwise be in full force at law.". (Sept. 14, 1965, 79 Stat. 713, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; Sept. 29, 1970, Pub. L. 91–358, title I, § 149 (1), (5), 84 Stat. 566, 567.)

AMENDMENT

1970—Section 149(1) of Act July 29, 1970, Public Law 91–358 amended subsection (b) by striking out "to the United States".

Sec. 149(5) amended section by striking out in the form referred to therein "Probate Court of the District of Columbia" and "Probate Court of the District" and inserting in lieu thereof "Probate Court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–504.

§ 20–504. Duties of collector; liability; commission; additional bond requirements if real estate to be possessed

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–506.

Chapter 7.—INVENTORY OF ASSETS

§ 20–706. Exceptions to inventory

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–901.

Chapter 9.—ASSETS OF ESTATE

§ 20–903. Claims of testator against executor not discharged; disposition; liability of surety

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20–904, 20–905.

§ 20–904. Failure of executor to include claims of testator against executor in inventory; remedy

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–905.

Chapter 11.—SALE OF ASSETS

§ 20–1103. Sale of real estate directed in will; procedure; failure to act

NOTES TO DECISIONS

Specific performance

Where probate judge had rejected executor's sale of realty to plaintiffs and had accepted a higher offer, plaintiffs were not entitled to specific performance of contract or to recover damages from executor for breach of contract in absence of showing that procedures followed by probate judge were contrary to law. *E. H. Savage, etc.* v. *C. L. Pinderhughes, Executor etc.* (1967, 382 F. 2d 171, 127 U.S. App. D.C. 222).

§ 20–1106. Authority of court regarding sales of realty; responsibility for proceeds; restrictions on sales; auditor's report

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–1111.

§ 20–1107. Bond to prevent sale of real estate

An order for the sale of real estate may not be granted if a person interested in the estate gives bond, with security to be approved by the Probate Court, conditioned to pay all the debts, or legacies, or both, as the case may be, that shall eventually be found due, and the costs of administration. (Sept. 14, 1965, 79 Stat. 719, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 149(1), 84 Stat. 566.)

AMENDMENT

1970—Section 149(1) of Act July 29, 1970, Public Law 91–358 amended section by striking out "to the United States".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 20–1110. Appointment of trustee to sell real estate; bond

When a person dies having devised real estate to be sold, without having appointed a trustee to sell the property, or if the person so appointed neglects or refuses to execute the trust, or dies before the execution of the trust, the Probate Court may, on the application of a person interested, appoint a trustee to sell and convey the property and apply the proceeds of sale to the purposes intended. Where a trustee is appointed by last will to execute a trust,

and a person interested in the execution of the trust makes it appear that it is necessary for the safety of those interested therein that the trustee should give bond and security for the due execution of the trust, the Court may order and direct that a bond be given by the trustee by a day named, and on failure of the trustee to give the bond, with security to be approved by the court as directed, the court may displace the trustee and appoint another in his stead, who shall give the bond. The bond may be sued on for the use of a person interested. (Sept. 14, 1965, 79 Stat. 719, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 149(6), 84 Stat. 567.)

AMENDMENT

1970—Section 149(6) of Act July 29, 1970, Public Law 91–358 amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Probate Court", and by striking out "shall be given to the United States and".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 15–707.

Chapter 13.—CLAIMS OF CREDITORS

§ 20–1302. Judgment or decree; voucher or proof

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–1303.

§ 20–1303. Bond, note, check, protested bill of exchange; original or copy of instrument to constitute voucher

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–1304.

§ 20–1313. Payment of claims

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–1315.

§ 20–1318. Period during which creditors may file suit after claim is contested

NOTES TO DECISIONS

Computation of time

If legally authenticated claim is exhibited to executor or administrator and he rejects it, his rejection sets in motion running of three-month statute of limitations and any claim sued on more than three months after rejection is barred. *F. M. Graham, formerly F. M. Frel, Administratrix etc.* v. *S. Gordon etc.* (D.C. App. 1968, 242 A. 2d 838).

Where endorser of installment note had brought action against estate for face amount of note but was awarded judgment only for installments which he had paid, subsequent action which sought to recover additional installments paid and which was commenced more than three months after administratrix had rejected his prior claim was not barred by three-month statute of limitations. *Id.*

Construction

Statute creating three-month limitation period for asserting claim which had been rejected by executor or administrator must be strictly construed. *F. M. Graham, formerly F. M. Frel, Administratrix etc.* v. *S. Gordon etc.* (D.C. App. 1968, 242 A. 2d 838).

Administrator may not start running of short statute of limitations by rejecting claim which has not been authenticated. *Id.*

Where claim originally rejected is different in form from claim sued upon, short statute of limitations does not bar suit. *Id.*

Effect of other decision on issue of jurisdiction

In an action to enforce default judgment rendered by New York court, federal court's dismissal of defendants' counterclaim was not res judicata on issue of validity of the New York judgment, where issue of jurisdiction of New York Court to render that judgment, although mentioned in defendants' points and authorities in opposition to motion to dismiss, was apparently not the determinative factor in that decision, and order of dismissal did not indicate that it was based on finding that New York court had jurisdiction, and there was no reference in the order to question of jurisdiction. *Franklin National Bank* v. *B. Krakow, as Co-executor et al., etc.* (1969, 295 F. Supp. 910).

Plaintiff who sued to enforce default judgment rendered by New York court was not entitled to judgment on pleadings because the federal court for District of Columbia previously had granted plaintiff's motion to dismiss defendants' counterclaim which had alleged invalidity of the New York judgment, where the reason for dismissing counterclaim was not enunciated. *Id.*

Enforcement of foreign judgment

Plaintiff's motion for judgment on the pleadings treated as a motion for summary judgment, in an action to enforce a default judgment rendered by a New York court on a note executed by defendants' decedent would be denied, where defendants' allegations in opposition to the motion including showing that only connection with New York state was that note provided that the note should be governed by New York laws raised genuine issues of material fact which, if proved, would establish that New York court lacked jurisdiction. *Franklin National Bank* v. *B. Krakow, as Co-executor, et al., etc.* (1969, 295 F. Supp. 910).

Full faith and credit

Full faith and credit clause of the Constitution did not preclude an inquiry by the federal court in District of Columbia in an action brought to enforce a default judgment entered by New York Supreme Court into jurisdiction of the New York court to render the judgment sought to be enforced. *Franklin National Bank* v. *B. Krakow, as Co-executor, et al., etc.* (1969, 295 F. Supp. 910).

Inquiry into jurisdiction of foreign court

In an action to enforce default judgment rendered by a New York court, in making inquiry into jurisdiction of the New York court to render the judgment federal court was bound to apply the law of New York applicable to question of jurisdiction rather than the District of Columbia law notwithstanding the jurisdictional standards of the District of Columbia might not support a judgment such as the one rendered by the New York court. *Franklin National Bank* v. *B. Krakow, as Co-executor, et al., etc.* (1969, 295 F. Supp. 910).

In an action to enforce a default judgment rendered by a New York court against defendants who were not served in New York, federal court was not precluded from inquiring into jurisdiction of the New York court to render the judgment on grounds that defendants were required to go into New York state to contest jurisdiction since defendants were free to ignore the proceedings and ultimately resist any enforcement of default judgment since if judgment-rendering court lacked jurisdiction, the judgment was a nullity. *Id.*

§ 20–1320. Notice to creditors to file claims

An executor or administrator who, after six months from the date of his letters, pays away assets to the discharge of just claims is not answerable for any claim of which he had no knowledge or notice by an exhibition of the claim legally authenticated, if, at least three months before he makes distribution he causes to be inserted in as many newspapers as the Probate Court directs, a notice to the following effect: "This is to give notice that the subscriber, of ————, has obtained from the Probate Court letters testamentary (or of administration) on the personal estate of ————, late of ————, deceased. All persons having claims against the deceased are hereby warned to exhibit the same, with the vouchers thereof legally authenticated, to the subscriber on or before the ———— day of ———— next; they may otherwise by law be excluded from all benefit of the estate.

"Given under my hand this ———— day of ————.". (Sept. 14, 1965, 79 Stat. 724, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 149(7), 84 Stat. 567.)

AMENDMENT

1970—Section 149(7) of Act July 29, 1970, Public Law 91–358 amended section striking out "Probate Court of the District of Columbia" and inserting in lieu thereof "Probate Court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–1321.

§ 20–1321. Report and proof of notice

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–1322.

§ 20–1323. Docket of claims

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–1324.

§ 20–1329. Creditor's[1] rights against property of nonresident decedent; limitation

NOTES TO DECISIONS

Effect of appointment of guardian of nonresident minor's estate

Appointment by a local court of a guardian of a nonresident minor's estate on basis that situs of property in which minor had alleged interest was in District of Columbia did not change domicile of minor and the appointment did not, in and of itself, make the nonresident a local creditor or give local-creditor-basis for denying transfer of funds of deceased from local ancillary proceedings to domiciliary proceedings in Florida. *M. N. Suydam, etc., et al.* v. *J. E. Suydam* (1968, 404 F. 2d 1332, 131 U.S. App. D.C. 355).

Transfer of funds to domiciliary administration

Granting of motion to transfer funds from ancillary to domiciliary proceedings in Florida after full evidentiary hearing was an exercise of discretion. *M. N. Suydam, etc., et al.* v. *J. E. Suydam* (1968, 404 F. 2d 1332, 131 U.S. App. D.C. 355).

Court on motion of ancillary administratrix properly transferred funds of deceased to Florida where domiciliary administration took place where there were no locally domiciled creditors but rather only a nonresident's claim presented locally. *Id.*

Chapter 15.—SUITS

§ 20–1505. Suits by foreign executors and administrators

A person to whom letters testamentary or of administration have been granted by the proper authority in any of the United States or the territories thereof may maintain a suit or action and prosecute and recover a claim in the District of Columbia in the same manner as if the letters had been granted to him in the District. The letters, or a copy thereof certified under the seal of the authority granting them, are sufficient evidence to prove the granting of the letters, and that the person has administration. The Probate Court may, however, upon the petition of any one interested, require from the person the security required by law in like cases from a resident administrator or executor, or the court may grant auxiliary or ancillary letters, if the case requires, to the same person or other persons. (Sept. 14, 1965, 79 Stat. 727, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 149(7), 84 Stat. 567.)

AMENDMENT

1970—Section 149(7) of Act of July 29, 1970, Public Law 91–358 amended section by striking out "Probate Court of the District of Columbia" and inserting in lieu thereof "Probate Court."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 19.—DISTRIBUTION OF SURPLUS

§ 20–1901. Distribution; when to be made

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 19–114.

NOTES TO DECISIONS

Equitable apportionment of estate taxes

Purpose of the marital deduction provision does not modify meaning of District of Columbia statute whereby dissenting widow can take one-third of surplus after debts, and hence the amount of property received by widow's election, and thus the amount eligible for marital deduction, was a portion of the surplus remaining after deducting entire amount of estate taxes, in view of District of Columbia rule rejecting doctrine of general equitable apportionment of estate taxes. *R. H. DelMar et al.* v. *United States* (1968, 390 F. 2d 466, 129 U.S. App. D.C. 51).

Congress adopted the marital deduction to provide opportunity for equalization of the tax treatment of estates in common law and community property states. *Id.*

§ 20–1904. Partial distribution

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–1905.

Chapter 21.—ADMINISTRATION OF SMALL ESTATES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 20–1325.

§§ 20–2101, 20–2102

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 20–2103, 20–2105.

Chapter 23.—ESTATES AND ABSENTEES AND ABSCONDERS

Sec.

20–2301. Petition for appointment of receiver, where absentees interested in property; Corporation Counsel as party.

AMENDMENT

1970—Section 149(8)(B) of Act July 29, 1970, Public Law 91–358 amended chapter analysis relating to item 20–2301 to read as above set out.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 20–2301. Petition for appointment of receiver, where absentees interested in property; Corporation Counsel as party

(a) If a person entitled to or having an interest in property in the District of Columbia has disappeared or absconded from the District of Columbia, and it is not known where he is, or if he, having a wife or minor child, dependent to any extent upon him for support, has disappeared or absconded without making sufficient provision for the support, and it is not known where he is, or if his whereabouts is known and he has been without the District of

[1] So in original. Does not agree with section catchline appearing in chapter analysis preceding § 20–1301.

Columbia continuously for two years or longer, a person who would under the law of the District of Columbia be entitled to administer upon the estate of the absentee if he were deceased, or, if no one is known to be so entitled, any suitable person, or the wife, or someone in her or the minor's behalf, may file a petition, under oath, in the Probate Court, stating:

(1) the name, age, occupation, and last known residence or address of the absentee;

(2) the date and circumstances of the disappearance or absconding; and

(3) the names and residences of other persons, whether members of the absentee's family or otherwise, of whom inquiry may be made.

The petition shall also contain a schedule of the property, real and personal, of the absentee, as far as known, within the District of Columbia, and pray that the property be taken possession of, and a receiver be appointed under this chapter.

(b) The Corporation Counsel of the District of Columbia shall be made a party to a petition filed under subsection (a) of this section, and shall be given notice of all subsequent proceedings under this chapter. (Sept. 14, 1965, 79 Stat. 733, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; Sept. 10, 1966, 80 Stat. 738, Pub. L. 89–567, § 2; July 29, 1970, Pub. L. 91–358, title I, § 149(8)(A), 84 Stat. 567.)

AMENDMENTS

1970—Section 149(8)(A) of Act July 29, 1970, Public Law 91–358 amended subsection (a) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Probate Court" and by striking out "United States attorney" in the section heading and inserting in lieu thereof "Corporation Counsel".

1966—Section 2 of Act Sept. 10, 1966, Public Law 89–567 amended subsection (b) by striking out "The United States attorney for the District of Columbia" and inserting in lieu thereof "The Corporation Counsel of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20–2302, 20–2305, 20–2308.

§ 20–2302. Warrant to United States marshal; fees of marshal

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20–2303, 20–2306.

§ 20–2303. Notice of hearing to absentee and interested parties

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20–2304, 20–2308.

§ 20–2305. Appointment of receiver; bond; finding of date of disappearance

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20–2306 to 20–2308, 20–2314.

§ 20–2307. Possession, by receiver, of additional property; collection of debts

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–2308.

§ 20–2312. Compensation of receiver; interest of absentee in property to cease after fourteen years

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20–2313, 20–2314.

§ 20–2313. Distribution after fourteen years as if absentee had died intestate

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 20–2314.

TITLE 21.—FIDUCIARY RELATIONS AND THE MENTALLY ILL

Chap. Sec.
11. Commitment and Maintenance of Substantially Retarded Persons..... 21–1101

AMENDMENTS

1970—Section 2(b) of Act Oct. 22, 1970, Pub. L. 91–490, amended analysis by striking out "Feeble-Minded" in item 11 and inserting in lieu thereof "Substantially Retarded".

Section 150(j) of Act July 29, 1970, Pub. L. 91–358, amended anaylsis by striking out "Feeble-Minded" in item 11 and inserting in lieu "Substantially Retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

Chapter 1.—GUARDIANSHIP OF INFANTS

SUBCHAPTER I.—APPOINTMENT OF GUARDIAN; BOND

§§ 21–101 to 21–104

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 21–106.

§ 21–108. Selection of guardian by infant

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21–107.

§ 21–112. Suits by ancillary guardian

(a) Upon the granting of ancillary letters, the guardian may institute and prosecute to judgment any action in the courts of the District of Columbia, take possession of all property of his ward, and collect and receive all moneys belonging and due to him therein, give full receipt and acquittances for debts, and release all claims, liens, and mortgages belonging to the ward, on property in the District of Columbia, in the same manner as if his authority had been originally conferred by the Probate Court.

(b) The guardian shall give security for the costs which may accrue in an action brought by him, in the same manner as other nonresidents bringing suit in the courts of the District. (Sept. 14, 1965, 79 Stat. 740, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(a)(1), 84 Stat. 567.)

AMENDMENT

1970—Section 150(a)(1) of Act July 29, 1970, Public Law 91–358, amended subsec. (a) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Probate Court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 15–707.

§ 21–115. Bond of guardian of estate

A guardian appointed by the court, other than a corporation authorized to act as guardian, and a testamentary guardian, unless otherwise directed by the will making the appointment, before entering upon or taking possession of or interfering with the estate of the infant, shall execute a bond in such penalty and with such surety as the court approves, to be recorded and to be liable to be sued upon for the use of a person interested, with the condition that if he, as guardian, faithfully accounts to the court, as required by law, for the management of the property and estate of the infant under his care, and delivers up the property agreeably to the order of the court or the directions of law, and in all respects performs the duty of guardian according to law, then the obligation shall cease; it shall otherwise remain in full force. (Sept. 14, 1965, 79 Stat. 740, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(a)(2), 84 Stat. 567.)

AMENDMENT

1970—Section 150(a)(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out "to the United States".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 15–707.

SUBCHAPTER II.—PROPERTY OF INFANTS

§ 21–141. Possession of property

NOTES TO DECISIONS

Will as being a part of a ward's estate

Requiring adult children of ward to transfer to conservators alleged testamentary document entrusted to children by ward was not improper on ground that will was not part of ward's estate in his lifetime. *C. M. Price and G. P. Marshall, Jr., etc.* v. *E. B. Williams et al.* (1968, 393 F. 2d 348, 129 U.S. App. D.C. 239).

§ 21–143. Duties; accounts; maintenance and education; sales; compensation

NOTES TO DECISIONS

Reasonable compensation

A figure of 5% as a flexible rule of thumb for fixing reasonable compensation, in ordinary case, to guardians ad litem and conservators appointed pursuant to statute governing guardians of property of mentally incompetent persons, is permissible. *E. D. Mitchell* v. *C. D. Ensor, et al.* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

§ 21–146. Contract for sale by adult in behalf of himself and infant

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–2901.

§ 21–148. Sale or exchange of real estate; proceedings

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21–149 to 21–151, 21–155.

§§ 21–149, 21–150

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 21–155.

§ 21–151. Decree of sale; costs

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21–152, 21–153, 21–155.

§§ 21–152, 21–153

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 21–155.

§ 21–158. Final account

On arrival of a ward at the age of 21 years the guardian shall exhibit a final account of his trust to the court, and shall, agreeably to the court's order, deliver up to the ward all the property of the ward in his hands and if he fails to do so, his bond may be sued upon for the use of the party interested, and he may be attached. (Sept. 14, 1965, 79 Stat. 744, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(a)(3), 84 Stat. 567.)

AMENDMENT

1970—Section 150(a)(3) of Act July 29, 1970, Public Law 91–358 amended section by striking out "in the name of the United States".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 15–707.

Chapter 3.—GIFTS TO MINORS—UNIFORM LAW

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–501, 11–921.

§ 21–301. Definitions

As used in this chapter:

(1) "adult" means a person who has attained the age of twenty-one years;

(2) "bank" means a person or association of persons carrying on the business of banking, whether incorporated or not, in the District of Columbia;

(3) "broker" means a person who is lawfully engaged in the business of effecting transactions in securities for the account of others; a financial institution which effects such transactions; and one who is lawfully engaged in buying and selling securities for his own account, through a broker or otherwise, as a part of a regular business;

(4) "court" means the Superior Court of the District of Columbia;

(5) "custodial property" means:

(A) securities, money, life insurance and annuity contracts under the supervision of the same custodian for the same minor as a consequence of gifts made to the minor in the manner prescribed by this chapter;

(B) the income from the custodial property; and

(C) the proceeds, immediate and remote, from the sale, exchange, conversion, investment, reinvestment, or other disposition of securities, money, life insurance and annuity contracts, and income;

(6) "custodian" means a person so designated in the manner prescribed by this chapter;

(7) "Financial institution" means—

(A) any bank,

(B) any homestead or building association, building and loan association, savings and loan association, or Federal savings and loan association, or

(C) any Federal credit union, having an office in the District of Columbia.

(8) "guardian of a minor" means the general guardian, guardian, tutor, or curator of the minor's property, estate, or person;

(9) "issuer" means a person who places or authorizes the placing of his name, other than as a transfer agent, on a security to evidence that it represents a share, participation or other interest in his property or in an enterprise or to evidence his duty or undertaking to perform an obligation evidenced by the security, or who becomes responsible for or in place of such a person;

(10) "legal representative" means the executor, administrator, general guardian, committee, conservator, tutor, or curator of a person's property or estate;

(11) "life insurance and annuity contracts" include only insurance and annuity contracts on the life of a minor or a member of the minor's family as defined by clauses (11) and (12);

(12) "member of a minor's family" includes a minor's parent, grandparent, brother, sister, uncle, and aunt, whether of the whole blood or the half blood, or by or through legal adoption;

(13) "minor" means a person who has not attained the age of 21 years;

(14) "security" means a note, stock, treasury stock, bond, debenture, evidence of indebtedness, certificate of interest or participation in an oil, gas, or mining title or lease or in payments out of production under such a title or lease, collateral trust certificate transferable, share, voting trust certificate, or, in general, an interest or instrument commonly known as a security, or a certificate of interest of participation in, a temporary or interim certificate, receipt, or certificate of deposit for, or a warrant or right to subscribe to or purchase, any of the foregoing; "security" does not include a security of which the donor is the issuer; a "security" is in "registered form" when it specifies a person entitled to it or to the right it evidences and its transfer may be registered upon books maintained for that purpose by or on behalf of the issuer;

(15) "transfer agent" means one who acts as authenticating trustee, transfer agent, registrar, or other agent for an issuer in the registration of transfers of its securities or in the issue of new securities or in the cancellation of surrender securities;

(16) "trust company" means a bank authorized to exercise trust powers. (Sept. 14, 1965, 79 Stat. 744, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; Apr. 19, 1968, Pub. L. 90–290, § 1(1), 82 Stat. 98; July 29, 1970, Pub. L. 91–358, § 150(b), title I, 84 Stat. 567.)

AMENDMENTS

1970—Section 150(b) of Act of July 29, 1970, Public Law 91–358, amended paragraph (4) of section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

1968—Section 1(1), act Apr. 19, 1968, Pub. L. 90–290 amended section by striking "bank" in par. (3) and inserting "financial institution"; by renumbering former pars. (7) to (15) as (8) to (16); and by inserting a new par. (7) as above set out.

EFFECTIVE DATES OF 1970 AMENDMENTS TO CERTAIN SECTIONS OF TITLE 21

Section 199(b)(3) (A) and part of (B) of Pub. L. 91–358, provided:

(3) The amendments made by the following sections of this title (title I) (relating to those matters over which the United States District Court for the District of Columbia retains temporary jurisdiction) shall take effect as follows:

(A) Immediately following the expiration of the eighteenth month period beginning on the effective date of this title in the case of amendments made by sections 150(b), 150(c)(1), 150(c)(3), 150(c)(5)(A)(ii), 150(e), 150(f), 150(g)(3)(A), 150(g)(4), 150(g)(5), 150(g)(8), 150(h), and 150(i)(1).

* * * * *

The amendments made by section 150 to chapter 5 of title 21 of the District of Columbia Code (relating to hospitalization of the mentally ill) shall not apply with respect to any case pending before the United States District Court for the District of Columbia or the Commission on Mental Health at the expiration of such eighteen-month period.

[The D.C. Code sections amended by the above enumerated sections of Pub. L. 91–358 are: 21–301, 21–501, 21–502, 21–521, 21–544, 21–564, 21–581, 21–584, 21–590, 21–592, 21–703, 21–906, 21–1103, 21–1104, 21–1109, 21–1116, 21–1122, 21–1301, 21–1302, 21–1501.]

§ 21–302. Gifts of securities, money, life insurance, or annuity contracts to minors; manner of making

(a) An adult may, during his lifetime, make a gift of a security, money, life insurance or annuity contract to one who is a minor on the date of the gift, if the subject of the gift is a security:

* * * * *

(4) Where the subject of the gift is money, by paying or delivering it to a broker or a financial institution for credit to an account in the name of the donor, another adult, or a trust company, followed, in substance, by the words: "as custodian for [name of minor] under the District of Columbia Uniform Gifts to Minors Act."

* * * * *

(As amended Apr. 19, 1968, Pub. L. 90–290, § 1(2), 82 Stat. 98.)

AMENDMENTS

1968—Section 1(2), act Apr. 19, 1968, Pub. L. 90–290, amend subsec. (a)(4) by striking out "bank" and inserting "financial institution"; and by striking out "bank with trust powers" and inserting "trust company".

§ 21–303. Gift irrevocable; rights and duties of guardian or custodian

(a) A gift made as prescribed by this chapter is irrevocable and conveys to the minor indefeasibly vested legal title to the security, money, life insurance or annuity contract given, but a guardian of the minor does not have a right, power, duty, or authority with respect to the custodial property, except as provided by this chapter.

(b) By making a gift in the manner prescribed by this chapter, the donor incorporates in his gift all the provisions of this chapter and grants to the custodian, and to any issuer, transfer agent, financial institution, broker, insurance company, or third person dealing with a custodian, the respective powers, rights, and immunities provided by this chapter. (Sept. 14, 1965, 79 Stat. 746, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; Apr. 19, 1968, Pub. L. 90–290, § 1(3), 82 Stat. 98.)

AMENDMENT

1968—Section 1(3), act Apr. 19, 1968, Pub. L. 90–290, amended subsection (b) by striking "bank" and inserting "financial institution".

§ 21–304. Custodian to be one person; rights, powers, and duties of custodian

* * * * *

(g) A custodian shall register each security which is custodial property and in registered form in the name of the custodian, followed in substance, by the words: "as custodian for [name of minor] under the District of Columbia Uniform Gifts to Minors Act". He shall hold all money which is custodial property in an account with a broker or in a financial institution in the name of the custodian, followed, in substance, by the same words. He shall keep all other custodial property separate and distinct from his own property in a manner to identify it clearly as custodial property.

* * * * *

(As amended Apr. 19, 1968, Pub. L. 90–290 § 1(3), 82 Stat. 98.)

AMENDMENT

1968—Section 1(3), act Apr. 19, 1968, Pub. L. 90–290 amended subsection (g) by striking "bank" and inserting "financial institution".

§ 21–306. Exemption of third persons from liability

An issuer, transfer agent, financial institution, broker, insurance company, or other person acting on the instructions of or otherwise dealing with a person purporting to act as a donor or in the capacity of a custodian is not responsible for determining whether the person designated by the purported donor or purporting to act as a custodian has been duly designated or whether a purchase, sale, or transfer to or by or other act of a person purporting to act in the capacity of custodian is in accordance with or authorized by this chapter, and is not obliged to inquire into the validity of propriety under this chapter of an instrument or instructions executed or given by a person purporting to act as a donor or in the capacity of a custodian, and is not bound to see to the application by any person purporting to act in the capacity of a custodian of any money or other property paid or delivered to him. (Sept. 14, 1965, 79 Stat. 748, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; Apr. 19, 1968, Pub. L. 90–290, § 1(3), 82 Stat. 98.)

AMENDMENT

1968—Section 1(3), act Apr. 19, 1968, Pub. L. 90–290, amended section by striking "bank" and inserting "financial institution".

Chapter 5.—HOSPITALIZATION OF THE MENTALLY ILL

SUBCHAPTER VI.—MISCELLANEOUS PROVISIONS

Sec.

21–581. Proceedings instituted by Commissioner of the District of Columbia.
21–592. Return to hospital of an escaped mentally ill person.

AMENDMENTS

1970—Section 150(c)(5)(B) of Act July 29, 1970, Public Law 91–358 amended chapter analysis relating to item 21–581 to read as above set out.

Section 150(c)(7)(B) of Act July 29, 1970, Public Law 91–358 amended chapter analysis by adding item 21–592.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 2–2222, 11–501, 11–921, 11–1101, 16–2315, 16–2321, 24–528.

SUBCHAPTER I.—DEFINITIONS; COMMISSION ON MENTAL HEALTH

§ 21–501. Definitions

As used in this chapter:

* * * * *

"court" means the Superior Court of the District of Columbia;

* * * * *

(As amended, July 29, 1970, Pub. L. 91–358, title I, § 150(c)(1), 84 Stat. 567.)

AMENDMENT

1970—Section 150(c)(1) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 21–301.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–2301, 20–351, 21–701, 21–1501.

NOTES TO DECISIONS

Construction

Under sections 22–3501 to 22–3511, term "not insane" must be read to mean "not 'mentally ill'" within meaning of sections 21–501 to 21–591 and sections 22–3501 to 22–3511 apply only to those who are not mentally ill while compulsory treatment of those who are mentally ill is governed by sections 21–501 to 21–591. *T. B. Cross* v. *D. W. Harris* (1969, 418 F. 2d 1095, 135 U.S. App. D.C. 259).

Construction with other laws

The District of Columbia Sexual Psychopath Act was not repealed by the 1964 Hospitalization of Mentally Ill Act. *M. I. Millard* v. *D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

Court of Appeals would not read into the District of Columbia Sexual Psychopath Act the procedural protections of the Hospitalization of the Mentally Ill Act. *Id.*

Limitation of applicability of chapter

The protection of the District of Columbia Hospitalization of the Mentally Ill Act is limited to those who are declared insane or of unsound mind pursuant to a court order and does not include any person previously committed under the Sexual Psychopath Act. *M. I. Millard* v. *D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

§ 21–502. Commission on Mental Health; composition; appointment and terms of members; organization; chairman; salaries

(a) The Commission on Mental Health is continued. The Superior Court of the District of Columbia shall appoint the members of the Commission, and the Commission shall be composed of nine members. One member shall be a member of the bar of the court, who has engaged in active practice of law in the District of Columbia for a period of at least five years prior to his appointment. He shall be the Chairman of the Commission and act as the administrative head of the Commission and its staff. He shall preside at all hearings and direct all of the proceedings before the Commission. He shall devote his entire time to the work of the Commission. Eight members of the Commission shall be physicians who have been practicing medicine in the District of Columbia and who have had not less than five years' experience in the diagnosis and treatment of mental illnesses.

* * * * *

(As amended, July 29, 1970, Pub. L. 91–358, title I, § 150(c)(1), 84 Stat. 567.)

AMENDMENT

1970—Section 150(c)(1) of Act July 29, 1970, Public Law 91–358, amended subsection (a) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 21–301.

CONTINUATION IN OFFICE EXISTING MEMBERS OF COMMISSION

Section 150(d), of Act July 29, 1958, Pub. L. 91–358 provided:

"Members of the Commission on Mental Health established under section 21–502 of title 21 of the District of Columbia Code who are in office on the effective date of this title shall continue in office as provided in subsection (b) of that section."

§ 21–503. Examinations and hearings; subpenas; witnesses; place

NOTES TO DECISIONS

Sufficiency of record

Since examining doctors concluded that person committed under sections 22–3501 to 22–3511 was not insane but they had no occasion to consider whether he was nonetheless mentally ill, there was no record on the question and habeas corpus petition must be remanded for hearing and findings of fact necessary to determine whether statute was properly applied to petitioner. *T. B. Cross* v. *D. W. Harris* (1969, 418 F. 2d 1095, 135 U.S. App. D.C. 259).

SUBCHAPTER II.—VOLUNTARY AND NONPROTESTING HOSPITALIZATION

§ 21–511. Voluntary hospitalization

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21–512.

§ 21–512. Release of voluntary patient

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21–526.

§ 21–513. Hospitalization of nonprotesting person

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21–514.

§ 21–514. Release of patients hospitalized under section 21–513

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21–513.

SUBCHAPTER III.—EMERGENCY HOSPITALIZATION

§ 21–521. Detention of persons believed to be mentally ill; transportation and application to hospital

An accredited officer or agent of the Department of Public Health of the District of Columbia, or an officer authorized to make arrests in the District of Columbia, or a physician of the person in question, who has reason to believe that a person is mentally ill and, because of the illness, is likely to injure himself or others if he is not immediately detained may, without a warrant, take the person into custody,

transport him to a public or private hospital, and make application for his admission thereto for purposes of emergency observation and diagnosis. The application shall reveal the circumstances under which the person was taken into custody and the reasons therefor. (Sept. 14, 1965, 79 Stat. 753, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(c)(2), 84 Stat. 567.)

AMENDMENT

1970—Section 150(c)(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out "the family physician" and inserting "a physician".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 21–301.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21–522.

NOTES TO DECISIONS

Commencement of judicial proceedings

Physician's petition for judicial hospitalization of patient commenced the judicial proceedings so that detention of patient during course of proceedings was authorized even though petition was not filed until almost four weeks after patient had been admitted to hospital. *In the Matter of H. Perry* (1967, 269 F. Supp. 729).

§ 21–522. Examination and admission to hospital; notice

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21–523, 21–524.

§ 21–523. Court order requirement for hospital detention beyond 48 hours; maximum period for observation

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21–522, 21–524, 21–526.

NOTES TO DECISIONS

Construction

Statute providing that a person admitted to hospital for emergency observation and diagnosis may not be detained for period over 48 hours unless hospital administrator has filed petition for order authorizing continued hospitalization must be read in connection with another provision providing that hospital administrator may, if judicial proceedings for hospitalization have been commenced, detain person in hospital during course of the judicial proceedings. *In the Matter of H. Perry* (1967, 269 F. Supp. 729).

§ 21–524. Determination and order of court

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21–525 to 21–527.

§ 21–525. Hearing by court

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21–526.

§ 21–528. Detention of person pending judicial proceedings

NOTES TO DECISIONS

Construction

Statute providing that a person admitted to hospital for emergency observation and diagnosis may not be detained for period over 48 hours unless hospital administrator has filed petition for order authorizing continued hospitalization must be read in connection with another provision providing that hospital administrator may, if judicial proceedings for hospitalization have been commenced, detain person in hospital during course of the judicial proceedings. *In the Matter of H. Perry* (1967, 269 F. Supp. 729).

SUBCHAPTER IV.—HOSPITALIZATION UNDER COURT ORDER

§ 21–541. Petition to Commission; copy to person affected

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21–542, 21–551, 21–582.

NOTES TO DECISIONS

Commencement of judicial proceedings

Physician's petition for judicial hospitalization of patient commenced the judicial proceedings so that detention of patient during course of proceedings was authorized even though petition was not filed until almost four weeks after patient had been admitted to hospital. *In the Matter of H. Perry* (1967, 269 F. Supp. 729).

Scope of mandatory commitment

Notwithstanding fact that appeal of denial of petition for writ of habeas corpus by person who was acquitted by reason of insanity and summarily committed to mental hospital pursuant to mandatory provisions of District of Columbia statute raised substantial questions concerning scope of mandatory commitment and its relationship to the Hospitalization of the Mentally Ill Act, in view of petitioner's unconditional release from hospital while appeal was pending, appeal was dismissed as moot. *S. I. Solomon* v. *D. C. Cameron, Sup't etc.* (1967, 377 F. 2d 170, 126 U.S. App. D.C. 285).

§ 21–542. Hearing by Commission; presence and rights of person affected; hearing regarding liability

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21–544.

§ 21–543. Representation by counsel; compensation; recess

NOTES TO DECISIONS

Procedural safeguards

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act (now title 21, section 501 et seq., D.C. Code) providing full system of procedural safeguards before finding of mental illness can be made. *R. E. Mathews, Jr.* v. *K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

Under section 24–302 providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner may be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in title 21, section 501 et seq., and same procedures for release from hospital as are embodied in those sections. *Id.*

§ 21–544. Determinations of Commission; report to court; copy to person affected; right to jury trial

If the Commission finds, after a hearing under section 21–542, that the person with respect to whom the hearing was held is not mentally ill or if mentally ill, is not mentally ill to the extent that he is likely to injure himself or other persons if allowed to remain at liberty, the Commission shall immediately order his release and notify the court of that fact in writing. If the Commission finds, after the hearing, that the person with respect to whom the hearing was held is mentally ill, and because of the illness is likely to injure himself or other persons if allowed to remain at liberty, the Commission shall promptly report that fact, in witing, to the Superior Court of the District of Columbia. The report shall contain the Commission's findings of fact, conclusions of law, and recommendations. A copy of the report of the

Commission shall be served personally on the alleged mentally ill person and his attorney. An alleged mentally ill person with respect to whom the report is made has the right to demand a jury trial, and the Commission, orally and in writing, shall advise him of this right. (Sept. 14, 1965, 79 Stat. 755, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(c)(3), 84 Stat. 567.)

AMENDMENT

1970—Section 150(c)(3) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 21–301.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21–545.

NOTES TO DECISIONS

Acquiescence in plea of insanity

Where petitioner had not himself sought introduction of insanity defense at his trial and had not acquiesced in assertion of that defense, his commitment to hospital for the mentally ill following his acquittal by reason of insanity was not authorized and he was entitled to habeas corpus. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

Construction

Statute to effect that when it appears to court that accused is of unsound mind or is mentally incompetent so as to be unable to understand proceedings against him court may order accused committed for observation and treatment if necessary did not authorize trial judge's affording hearing to determine for commitment purposes mental condition of accused found not guilty by reason of insanity, applying release standards of 1964 Hospitalization of the Mentally Ill Act or extending to accused rights which the 1964 Act guaranteed only to those civilly committed. *D. C. Cameron, Sup't etc.* v. *C. Mullen etc.* (1967, 387 F. 2d 193, 128 U.S. App. D.C. 235).

Danger to community

Consideration of a person's likely danger to community is appropriate in civil commitment proceedings but is irrelevant in a criminal trial. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

Least restrictive alternative

The principle of the least restrictive alternative consistent with the legitimate purposes of a commitment inheres in the very nature of civil commitment, which entails an extraordinary deprivation of liberty justifiable only when the respondent is "mentally ill to the extent that he is likely to injure himself or other persons if allowed to remain at liberty." *J. Covington* v. *D. W. Harris* (1969, 419 F. 2d 617, 136 U.S. App. D.C. 35).

The court held that the principle of the least restrictive alternative is equally applicable to alternative dispositions within a mental hospital. *Id.*

Purpose of confinement

The court held that in reviewing on habeas corpus a civilly committed patient's confinement in a mental hospital, it should satisfy itself that no less onerous disposition would serve purpose of commitment. *J. Covington.* v. *D. W. Harris* (1969, 419 F. 2d 617, 136 U.S. App. D.C. 35).

Treatability

Treatability of one having a mental disease or defect is not an appropriate consideration at a criminal trial, and its relevance may even be doubtful in a civil commitment determination. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

§ 21–545. Hearing and determination by court or jury; order; witnesses; jurors

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21–546, 21–551.

NOTES TO DECISIONS

Acquiescence in plea of insanity

Where petitioner had not himself sought introduction of insanity defense at his trial and had not acquiesced in assertion of that defense, his commitment to hospital for the mentally ill following his acquittal by reason of insanity was not authorized and he was entitled to habeas corpus. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

Burden of proof

Burden of proof, in habeas corpus proceeding by one committed to mental hospital after being found not guilty by reason of insanity, is the same as that for civilly committed patients. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Rule that habeas corpus petitioner must prove that his detention is illegal by preponderance of evidence applies in habeas corpus proceeding by one committed to mental hospital after being found not guilty of offense by reason of insanity, and thus court must find, by preponderance of evidence, that patient's commitment is no longer valid, that is, that he is no longer likely to injure himself or other persons due to illness. *Id.*

Civil commitment of alleged criminal

Defendant who was insane for purpose of responsibility at time of offense may not be insane for purpose of civil commitment at time of verdict, or although competent to stand trial, he may be insane, dangerous and in need of treatment for purpose of civil commitment. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Civil commitment, when warranted

In order to warrant civil commitment, it is not essential that illness fit specifically into any of various classes of mental illnesses recognized by American Psychiatric Association. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Commitment procedure

Commission of criminal acts does not give rise to a presumption of dangerousness which, standing alone, justifies substantial difference in commitment procedures and confinement conditions for mentally ill, and that, while prior criminal conduct is relevant to the determination whether person is mentally ill or dangerous, it cannot justify denial of procedural safeguards for such determination, and that while prior criminal conduct is a relevant consideration it does not provide automatic basis for allowing significant and arbitrary differences in such conditions where defendant is acquitted on his own plea of insanity. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Prior criminal conduct cannot be deemed sufficient justification for substantial differences in procedures and requirements for commitment of those found not guilty by reason of insanity and other mentally ill persons. *Id.*

Rule that prior criminal conduct cannot be deemed sufficient justification for substantial differences in procedures and requirements for commitment of those found not guilty by reason of insanity and other mentally ill persons applies whether plea of insanity is raised by defendant, prosecutor or court. *Id.*

There is no reasonable basis for distinction for commitment purposes between those who plead insanity and those who have defense thrust upon them, and neither may be automatically deprived of type of protection afforded by 1964 Hospitalization of Mentally Ill Act. *Id.*

Fact that persons acquitted by reason of insanity have committed criminal acts and that such fact may tend to show they meet requirements for commitment does not remove such requirements nor justify total abandonment of procedures used in civil commitment proceedings to determine whether such requirements have been satisfied. *Id.*

Persons found not guilty by reason of insanity must be given judicial hearing with procedures substantially similar to those in civil commitment proceedings. *Id.*

Where feasible, requirements of Hospitalization of Mentally Ill Act as to notice, counsel, and jury trial should be followed in connection with judicial hearing afforded persons found not guilty by reason of insanity. *Id.*

Rule that persons found not guilty by reason of insanity must be given judicial hearing with procedures substantially similar to those in civil commitment proceedings is applicable prospectively only. *Id.*

Construction

Statute sanctioning commitment of mentally ill person, a drastic curtailment of the rights of citizens, must be narrowly construed in order to avoid deprivations of liberty without due process of law. *J. Covington* v. *D. W. Harris* (1969, 419 F. 2d 617, 136 U.S. App. D.C. 35).

Danger to community

Consideration of a person's likely danger to community is appropriate in civil commitment proceedings but is irrelevant in a crimnial trial. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

Evidence

In absence of evidence that husband was of sound mind or had requisite mental capacity to execute any documents, ratify acts of another or authorize the signing of his name at time wife completed form requesting Veterans Administration to pay her a portion of husband's disability benefits, the previous adjudication of incompetence is presumed to be of continuing validity and trial court's findings that all representations made by wife to Veterans Administration were at husband's request and were ratified by him, and that he authorized wife to sign his name on benefit form were erroneous. *A. D. Martin* v. *L. P. Martin* (D.C. App. 1970, 270 A. 2d 141).

In view of psychiatrists' testimony that person was suffering from condition which substantially impaired his health, that the condition was interrelated with his mental deficiency, and that his antisocial behavior occurred as result and manifestation of underlying mental illness, there was sufficient evidence for jury to find that person in addition to being mentally deficient was suffering from a mental illness. *In re M. W. Alexander, Patient* (1967, 372 F. 2d 925, 125 U.S. App. D.C. 352).

Grounds for commitment

To sustain a civil commitment under District of Columbia Code it is insufficient to find that a person is mentally deficient even when such condition is accompanied by some antisocial behavior, and government must prove by preponderance of evidence that individual suffers from mental illness, whether related or unrelated to mental deficiency, and that danger-productive behavior of individual results from mental illness. *In re M. W. Alexander, Patient* (1967, 372 F. 2d 925, 125 U.S. App. D.C. 352).

Instructions

To extent that district court's instruction reflected government trial counsel's view that mental deficiency in and of itself constituted a mental illness within District of Columbia statute relating to civil commitment instruction was improper, but when court's charge was taken in its entirety the jury had been clearly and properly informed they could not commit person simply because of his mental deficiency. *In re M. W. Alexander, Patient* (1967, 372 F. 2d 925, 125 U.S. App. D.C. 352).

Investigation discretionary

Provision of the District of Columbia Hospitalization of the Mentally Ill Act providing that court may order hospitalization or any other alternative course of treatment makes court's duty to investigate discretionary and not mandatory. *C. Lake* v. *Dr. D. C. Cameron* (1967, 267 F. Supp. 155).

Justification for treatment

Evidence in committed petitioner's habeas corpus proceeding established that actual medical and psychiatric treatment extended to petitioner was fully warranted and that, in view of petitioner's tendency to wander, there was no facility within district, other than mental hospital with closed wards, presently capable of treating her. *C. Lake* v. *Dr. D. C. Cameron* (1967, 267 F. Supp. 155).

Procedural safeguards

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act (now title 21, section 501 et seq., D.C. Code) providing full system of procedural safeguards before finding of mental illness can be made. *R. E. Mathews, Jr.* v. *K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

Under section 24–302 providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner may be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in title 21, section 501 et seq., and same procedures for release from hospital as are embodied in those sections. *Id.*

Purpose of confinement

The court held that in reviewing on habeas corpus a civilly committed patient's confinement in a mental hospital, it should satisfy itself that no less onerous disposition would serve purpose of commitment. *J. Covington.* v. *D. W. Harris* (1969, 419 F. 2d 617, 136 U.S. App. D.C. 35).

Treatability

Treatability of one having a mental disease or defect is not an appropriate consideration at a criminal trial, and its relevance may even be doubtful in a civil commitment determination. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

Validity of prison officials' policy

The simple fact that the prisoner was back in prison at time case was heard did not relieve court of obligation to appraise validity of prison officials' continuing policy of commitments without hearing to mental institutions, inasmuch as prisoner was still subject to that policy. *R. E. Mathews, Jr.* v. *K. L. Hardy et al.* (1969, 420 F. 2d 607, — U.S. App. D.C. —).

§ 21–546. Periodic requests for examination of hospitalized patient; procedure for examination and detention or release; petition to court

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21–547, 21–549, 21–589.

NOTES TO DECISIONS

Administrators discretion

The court held that efficient hospital administration requires the courts to accord administrators much broader discretion in determining the appropriateness of an intra-hospital disposition of mentally ill person than in assaying the need for hospitalization ab initio; however, additional restrictions beyond those necessarily entailed by hospitalization are as much in need of justification as any other deprivations of liberty; and judicial review of internal decisions is not precluded. *J. Covington* v. *D. W. Harris* (1969, 419 F. 2d 617, 136 U.S. App. D.C. 35).

Basis of Confinement

Confinement of the mentally ill rests upon basis substantially different from that which supports confinement of those convicted of crime since confinement of mentally ill depends not only upon validity of initial commitment but also upon continuing status of the patient. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, —U.S. App. D.C.—).

Burden of proof

Mental patient who seeks complete release from confinement by writ of habeas corpus need only establish, by the preponderance of the evidence, that he is no longer likely to injure himself or other persons because of mental illness. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

Since habeas corpus proceeding on petition of mental patient for complete release from confinement is not strictly adversary in nature, conventional rules regarding the burden of coming forward with evidence do not

apply, and the hearing court and the parties bear equal responsibility to see that decision is had upon all the relevant evidence. *Id.*

Exhaustion of administrative remedy

The administrative remedy for mental patient that must be exhausted prior to petition for habeas corpus is the medical examination, rather than request for examination, and if the examination has been conducted within six months prior to habeas corpus petition, the administrative remedy is exhausted. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427, F. 2d 589, — U.S. App. D.C. —).

Only if the required medical examination is in progress when the mental patient's habeas corpus petition is filed has the patient failed to exhaust his administrative remedy of complete medical examination. *Id.*

If the mental hospital has ignored its duty to the patient in its care, its misconduct may not be imputed to the patient and thereby prejudice patient's right to judicial review of his custody. *Id.*

If a mental patient is undergoing medical examination at the time his petition for habeas corpus is filed, the district court should defer action on the petition pending mental hospital's completion of the examination and if, after completion, the patient desires to continue with his petition, the district court should proceed to determination of the issues. *Id.*

Delay of plenary hearing on mental patient's petition for habeas corpus is not justified by patient's failure to avail himself of his right to be examined by an outside psychiatrist. *Id.*

Mental hospital is adequately informed of a patient's desire to invoke such internal remedies as exist in hospital by the filing of a petition seeking judicial review in district court. *Id.*

If adequate internal remedies of mental hospital are in process at the time mental patient files habeas corpus petition, proper procedure is to delay action on petition rather than to dismiss it. *Id.*

Mentally ill person

A person is "mentally ill" if he suffers from an abnormal condition of mind that substantially affects mental or emotional processes, and substantially impairs behavioral control. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

Periodic examinations

Statute governing release of persons acquitted by reason of insanity entitles patient to periodic examinations by hospital staff and right to be examined by outside psychiatrist and, if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent, etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Rule that patient committed to mental hospital after being found not guilty of offense by reason of insanity is entitled to periodic examinations by hospital staff and right to be examined by outside psychiatrist, and that if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing applies to all cases including those previously committed under statute providing for mandatory commitment of persons acquitted by reason of insanity. *Id.*

Petition for release

When a mental hospital patient's habeas corpus petition for release from mental hospital is based on his mental health at time petition was filed, the petition is not subject to dismissal on grounds that the merits of his claim had been determined in prior proceedings or that failure to present the issues in prior proceedings amounted to inexcusable neglect. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427, F. 2d 589, — U.S. App. D.C. —).

Since ten months had elapsed between denial of previous petition for habeas corpus and mental patient's subsequent petition, sufficient time had passed for patient to raise issue that his condition at time of petition warranted his release from confinement in mental institution. *Id.*

Under this section, petition for habeas corpus by mental patient seeking his release on ground that his present status no longer justifys commitment may be dismissed as repetitive only if that ground was adequately heard and determined adversely to the patient in a judicial proceeding within six months preceding the new application. *Id.*

Under this section, even if previous application by mental patient on same grounds was heard and determined within six months preceding the new application, the district court has full power to hold plenary hearing, on the issue of patient's present mental condition, if the court believes that the interests of justice would thereby be served. *Id.*

Under this section, if mental patient's petition for habeas corpus is based solely on grounds relating not to present status but rather to specific past events, the question of whether a new hearing is required is equivalent to that in case of a prisoner seeking release under habeas corpus or equivalent process. *Id.*

Procedural safeguards

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act (now title 21, section 501 et seq., D.C. Code) providing full system of procedural safeguards before finding of mental illness can be made. *R. E. Mathews, Jr.* v. *K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

Under section 24–302 providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner may be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in title 21, section 501 et seq., and same procedures for release from hospital as are embodied in those sections. *Id.*

Questions of fact

The presence of an abnormal mental condition, and the extent to which it impairs mental or emotional processes and controls, are questions of fact; how substantial such an impairment must be to be considered a mental illness is a matter of law. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

The likelihood of future misconduct of the mental patient who seeks release from confinement, the type of misconduct to be expected, and its probable frequency are questions of fact; whether the expected harm, and its apparent likelihood, are sufficiently great to warrant coercive intervention are questions of law. *Id.*

Release provisions

Release provisions of statute governing commitment to mental hospital of one found not guilty by reason of insanity are valid even though they differ from civil commitment procedures by authorizing court review of hospital's decision to release patient. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Equal protection is not offended by allowing government or court opportunity to insure that standards for release of civilly committed patients are faithfully applied to patients committed after having been found not guilty by reason of insanity. *Id.*

Scope of judicial review

When the mental patient is seeking complete release from confinement, the scope of judicial review of hospital administrator's decision is broader and the function of the hearing court is not simply to review the hospital's decision for unreasonableness, but rather itself to decide ultimate the question of whether the present status of the patient is such that continued confinement is justifiable. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

Sufficiency of return to petition for release

In this case, the court held that the mental hospital's return to habeas corpus petition filed by mental hospital was not sufficient to warrant trial court in denying plenary hearing on patient's mental condition at time of filing of petition. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

Validity of prison officials' policy

The simple fact that the prisoner was back in prison at time case was heard did not relieve court of obligation to appraise validity of prison officials' continuing policy of commitments without hearing to mental institutions, inasmuch as prisoner was still subject to that policy. *R. E. Mathews, Jr.* v. *K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

§ 21–547. Judicial determination of petition filed under section 21–546; order; physicians as witnesses

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21–549, 21–589.

NOTES TO DECISIONS

Release provisions

Release provisions of statute governing commitment to mental hospital of one found not guilty by reason of insanity are valid even though they differ from civil commitment procedures by authorizing court review of hospital's decision to release patient. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Equal protection is not offended by allowing government or court opportunity to insure that standards for release of civilly committed patients are faithfully applied to patients committed after having been found not guilty by reason of insanity. *Id.*

Periodic examinations

Statute governing release of persons acquitted by reason of insanity entitles patient to periodic examinations by hospital staff and right to be examined by outside psychiatrist and, if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Rule that patient committed to mental hospital after being found not guilty of offense by reason of insanity is entitled to periodic examinations by hospital staff and right to be examined by outside psychiatrist, and that if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing applies to all cases including those previously committed under statute providing for mandatory commitment of persons acquitted by reason of insanity. *Id.*

Procedural safeguards

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act (now title 21, section 501 et seq., D.C. Code) providing full system of procedural safeguards before finding of mental illness can be made. *R. E. Mathews, Jr.* v. *K. L. Hardy, et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

Under section 24–302 providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner may be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in title 21, section 501 et seq., and same procedures for release from hospital as are embodied in those sections. *Id.*

Validity of prison officials' policy

The simple fact that the prisoner was back in prison at time case was heard did not relieve court of obligation to appraise validity of prison officials' continuing policy of commitments without hearing to mental institutions, inasmuch as prisoner was still subject to that policy. *R. E. Mathews, Jr.* v. *K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

§ 21–548. Periodic examinations by hospital authorities; release

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21–549, 21–589.

NOTES TO DECISIONS

Basis of confinement

Confinement of the mentally ill rests upon basis substantially different from that which supports confinement of those convicted of crime since confinement of mentally ill depends not only upon validity of initial commitment but also upon continuing status of the patient. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

Exhaustion of administrative remedy

The administrative remedy for mental patient that must be exhausted prior to petition for habeas corpus is the medical examination, rather than request for examination, and if the examination has been conducted within six months prior to habeas corpus petition, the administrative remedy is exhausted. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

Only if the required medical examination is in progress when the mental patient's habeas corpus petition is filed has the patient failed to exhaust his administrative remedy of complete medical examination. *Id.*

If the mental hospital has ignored its duty to the patient in its care, its misconduct may not be imputed to the patient and thereby prejudice patient's right to judicial view of his custody. *Id.*

If a mental patient is undergoing medical examination at the time his petition for habeas corpus is filed, the district court should defer action on the petition pending mental hospital's completion of the examination and if, after completion, the patient desires to continue with his petition, the district court should proceed to determination of the issues. *Id.*

Mentally ill person

A person is "mentally ill" if he suffers from an abnormal condition of mind that substantially affects mental or emotional processes, and substantially impairs behavioral control, *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

Periodic examinations

Statute governing release of persons acquitted by reason of insanity entitles patient to periodic examinations by hospital staff and right to be examined by outside psychiatrist and, if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent, etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Rule that patient committed to mental hospital after being found not guilty of offense by reason of insanity is entitled to periodic examinations by hospital staff and right to be examined by outside psychiatrist, and that if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing applies to all cases including those previously committed under statute providing for mandatory commitment of persons acquitted by reason of insanity. *Id.*

Petition for release

When a mental hospital patient's habeas corpus petition for release from mental hospital is based on his mental health at time petition was filed, the petition is not subject to dismissal on grounds that the merits of his claim had been determined in prior proceedings or that failure to present the issues in prior proceedings amounted to inexcusable neglect. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

Since ten months had elapsed between denial of previous petition for habeas corpus and mental patient's subsequent petition, sufficient time had passed for patient to raise issue that his condition at time of petition warranted his release from confinement in mental institution. *Id.*

Question of fact

The presence of an abnormal mental condition, and the extent to which it impairs mental or emotional processes and controls, are questions of fact; how substantial such an impairment must be to be considered a mental illness is a matter of law. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, —— U.S. App. D.C. ——).

The likelihood of future misconduct of the mental patient who seeks release from confinement, the type of misconduct to be expected, and its probable frequency are questions of fact; whether the expected harm, and its apparent likelihood, are sufficiently great to warrant coercive intervention are questions of law. *Id.*

Release provisions

Release provisions of statute governing commitment to mental hospital of one found not guilty by reason of insanity are valid even though they differ from civil commitment procedures by authorizing court review of hospital's decision to release patient. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent, etc.* (1969, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Equal protection is not offended by allowing government or court opportunity to insure that standards for release of civilly committed patients are faithfully applied to patients committed after having been found not guilty by reason of insanity. *Id.*

Sufficiency of return to petition for release

In this case, the court held that the mental hospital's return to habeas corpus petition filed by mental hospital was not sufficient to warrant trial court in denying plenary hearing on patient's mental condition at time of filing of petition. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, —— U.S. App. D.C. ——).

§§ 21–549, 21–550

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 21–589.

§ 21–551. Nonresidents

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21–589, 21–906.

SUBCHAPTER V.—RIGHT TO COMMUNICATION; EXERCISE OF OTHER RIGHTS

§ 21–562. Medical and psychiatric care and treatment; records

NOTES TO DECISIONS

Availability of treatment

Availability of treatment for persons civilly committed to hospital as mentally ill had been sufficiently demonstrated in case so that it was not necessary to decide question of whether court erred in ordering hospitalization at particular hospital in absence of showing that he would receive medical and psychiatric treatment there. *In re M. W. Alexander, Patient* (1967, 372 F. 2d 925, 125 U.S. App. D.C. 352).

Basis for indefinite commitment

Indefinite commitment under sexual psychopath law is justifiable only upon a theory of therapeutic treatment. *M. I. Millard* v. *D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383).

Construction with other laws

The District of Columbia Sexual Psychopath Act was not repealed by the 1964 Hospitalization of Mentally Ill Act. *M. I. Millard* v. *D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

Court of Appeals would not read into the District of Columbia Sexual Psychopath Act the procedural protections of the Hospitalization of the Mentally Ill Act. *Id.*

Disclosure of records

The court held that hospital to which mentally ill person has been civilly committed may not disclose hospital records to outside parties without patient's consent does not imply that it is forbidden to introduce them in court where they are relevant to patient's contentions on habeas corpus. *J. Covington* v. *D. W. Harris* (1969, 419 F. 2d 617, 136 U.S. App. D.C. 35).

Evidence

In view of psychiatrists' testimony that person was suffering from condition which substantially impaired his health, that the condition was interrelated with his mental deficiency, and that his antisocial behavior occurred as result and manifestation of underlying mental illness, there was sufficient evidence for jury to find that person in addition to being mentally deficient was suffering from a mental illness. *In re M. W. Alexander, Patient* (1967, 372 F. 2d 925, 125 U.S. App. D.C. 352).

Habeas corpus

Alleged denial of mental patients' right to treatment would require remand of habeas corpus petition for a new hearing. *S. A. Dobson and R. Stultz* v. *D. C. Cameron, Sup't etc.* (1967, 383 F. 2d 519, 127 U.S. App. D.C. 324).

Petitioner involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity had right to treatment that was cognizable in habeas corpus, and law and justice required remand for hearing and findings on whether petitioner had received adequate treatment and, if not, the details and circumstances underlying the reason why he had not. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

Habeas corpus relief would be available to one involuntarily committed to public hospital as sexual psychopath but who is not receiving reasonably suitable and adequate treatment, and lack of such treatment could not be justified by lack of staff or facilities. *M. I. Millard* v. *D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 388; rev'd and remanded 406 F. 2d 964).

Instructions

To extent that district court's instruction reflected government trial counsel's view that mental deficiency in and of itself constituted a mental illness within District of Columbia statute relating to civil commitment instruction was improper, but when court's charge was taken in its entirety the jury had been clearly and properly informed they could not commit person simply because of his mental deficiency. *In re M. W. Alexander, Patient* (1967, 372 F. 2d 925, 125 U.S. App. D.C. 352).

Reasonable opportunity to initiate treatment

If court finds that a mandatorily committed patient is in custody in violation of Constitution and laws, for failure to receive treatment, it may allow hospital a reasonable opportunity to initiate treatment, but if opportunity for treatment has been exhausted or is otherwise inappropriate, conditional or unconditional release may be in order. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

Records—sufficiency

Generally, when a patient at a public mental hospital seeks to challenge the legality of decisions regarding treatment accorded him or manner of his confinement, hospital may not rely upon information or explanations not in the patient's hospital record to justify decision: records on their face must be adequate to demonstrate propriety of challenged decisions and may not be rehabilitated by subsequent demonstration in court. *D. Williams* v. *L. D. Robinson, Acting Sup't. etc.* (1970, 432 F. 2d 637, —— U.S. App. D.C. ——).

Until the hospital can demonstrate existence and adequacy of mechanisms to insure complaining patient fair opportunity to place facts and arguments in administrative record, patient complaining of treatment or manner of confinement must be allowed opportunity to show, by reference to evidence outside hospital records, that even decision proper on face of records did not meet applicable standards; if the patient relies upon evidence outside face of records, hospital may rebut showing by going beyond records as well. *Id.*

In a habeas corpus proceeding by patient in public mental hospital complaining of manner of confinement, government is entitled to remand, despite insufficiency of hospital records in record to support confinement, where importance, for purposes of judicial review, of inclusion of additional records may not have been sufficiently clear and government claimed that the records were available to justify confinement. *Id.*

Public mental hospital records disclosing only reports from hospital's security force detailing investigation of robbery and conclusion that patient was perpetrator and doctor's memorandum stating that the patient had been identified as one who had threatened employee are, while sufficient to support interim determination that hospital security required patient's prompt transfer to maximum security unit, insufficient to support continued confine-

ment in absence of showing that patient had been afforded reasonable opportunity to test evidence against him or that there was adequate plan of treatment. *Id.*

Right to treatment

One involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity has a right to treatment. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

On issue of right to treatment of one involuntarily committed on being acquitted of an offense by reason of insanity, hospital need not show that treatment will cure or improve him but only that there is bona fide effort to do so, and this requires hospital to show that initial and periodic inquiries are made into needs and conditions of patient with view to providing suitable treatment for him, and that the program provided is suited to his particular needs. *Id.*

On issue of right to treatment of one involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity, effort should be to provide treatment which is adequate in light of present knowledge. *Id.*

Continuing failure to provide suitable and adequate treatment of one involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity cannot be justified by lack of staff or facilities. *Id.*

Scope of judicial review

Where the decision of the hospital's administration challenged by mental patient relates essentially to internal administration of the hospital such as the patient's right to adequate treatment, transfer to less restrictive ward, or conditional release, judicial review is limited to determination whether the administrator of hospital has made permissible and reasonable decision in view of relevant information and within broad range of discretion. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

Treatment of patient

Under this section providing that a person hospitalized in public hospital for a mental illness shall be entitled to medical and psychiatric care and treatment, the hospital may be required to show that it is making "a bona fide effort" to cure or improve the patient and that the treatment provided "is suited to his particular needs." *J. Covington* v. *D. W. Harris* (1969, 419 F. 2d 617, 136 U.S. App. D.C. 35).

§ 21–564. Exercise of property and other rights; notice of inability; persons hospitalized prior to September 15, 1964

(a) A patient hospitialized pursuant to this chapter may not, by reason of the hospitalization, be denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, and hold a driver's license, unless the patient has been adjudicated incompetent by a court of competent jurisdiction and has not been restored to legal capacity. If the chief of service of the public or private hospital in which the patient is hospitalized is of the opinion that the patient is unable to exercise any of the rights referred to in this section, the chief of service shall immediately notify the patient and the patient's attorney, legal guardian, spouse, parents, or other nearest known adult relative, the Superior Court of the District of Columbia, the Commission on Mental Health, and the Commissioner of the District of Columbia of that fact.

(b) A person in the District of Columbia who, by reason of a judicial decree ordering his hospitalization entered prior to September 15, 1964, is considered to be mentally incompetent and is denied the right to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, or hold a driver's license solely by reason of the decree, shall, upon the expiration of the one-year period immediately following September 15, 1964, be deemed to have been restored to legal capacity unless, within the one-year period, affirmative action is commenced to have the person adjudicated mentally incompetent by a court of competent jurisdiction: *Provided, however,* That in those cases in which a committee has heretofore been appointed and the committeeship has not been terminated by court action, such committee shall continue to act under the supervision of the Superior Court of the District of Columbia under its equity powers. (Sept. 14, 1965, 79 Stat. 758, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(c)(3), (4), 84 Stat. 567.)

AMENDMENT

1970—Section 150(c)(3) of Act July 29, 1970, Public Law 91–358, amended subsections (a) and (b) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

Section 150(c)(4) further amended subsection (a) by striking out "Board of Commissioners" and inserting in lieu "Commissioner."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 21–301.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Construction

Only those hospitalized pursuant to Hospitalization of Mentally Ill Act are guaranteed by the civil rights act to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, or hold driver's license. *D. C. Cameron, Sup't etc.* v. *C. Mullen etc.* (1967, 387 F. 2d 193, 128 U.S. App. D.C. 235).

Effect of commitment

Commitment to St. Elizabeth's hospital does not automatically render person incompetent for most purposes. *D. C. Cameron, Sup't etc.* v. *C. Mullen etc.* (1967, 387 F. 2d 193, 128 U.S. App. D.C. 235).

SUBCHAPTER VI.—MISCELLANEOUS PROVISIONS

§ 21–581. Proceedings instituted by Commissioner of the District of Columbia

Proceedings instituted by the Commissioner of the District of Columbia to determine the mental condition of an alleged indigent mentally ill person or a person alleged to be mentally ill, with homicidal or otherwise dangerous tendencies, shall be according to the provisions of subchapter IV of this chapter. (Sept. 14, 1965, 79 Stat. 759, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(c)(5)(A), 84 Stat. 567.)

AMENDMENT

1970—Section 150(c)(5)(A) of Act July 29, 1970, Public Law 91–358 amended section(i) by striking out "Commissioners" in subsection (a) and in the section heading and inserting in lieu thereof "Commissioner", and

(ii) by striking out "(a)" and subsection (b).

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 21–301.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 21-584. Witness fees

Witnesses subpenaed under the provisions of this chapter shall be paid the same fees and mileage as are paid to other witnesses in the court. (Sept. 14, 1965, 79 Stat. 760, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(c)(6), 84 Stat. 567.)

AMENDMENT

1970—Section 150(c)(6) of Act July 29, 1970, Public Law 91-358 amended section by striking out "witnesses in the courts of the United States" and inserting in lieu thereof "other witnesses in the court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 21-301.

§ 21-585. Confinement in jail prohibited

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21-589.

NOTES TO DECISIONS

Basis for court's determination

The court concluded that before it can determine that hospital's decision to confine patient in maximum security ward is, within its broad discretion, "permissible and reasonable in view of the relevant information," it must be able to conclude that hospital has considered and found inadequate all relevant alternative dispositions within hospital. *J. Covington* v. *D. W. Harris* (1969, 419 F. 2d 617, 136 U.S. App. D.C. 35).

§ 21-586. Financial responsibility for care of hospitalized persons; judicial enforcement

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-542, 21-589.

NOTES TO DECISIONS

Support and education of adult child

A father is not legally required to support and educate an adult child, except as specified by statute when the child is in need of public assistance or is hospitalized because of mental illness. *W. T. Spence* v. *F. A. Spence* (D.C. App. 1970, 266 A. 2d 29).

§§ 21-587, 21-588

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 21-589.

§ 21-590. Discharge as cured; restoration to legal status

When a person adjudged to be of unsound mind in the District of Columbia who is committed to Saint Elizabeths Hospital, or any other institution, recovers his reason, and is discharged from the institution as cured, the Superintendent of Saint Elizabeths Hospital, or the official in charge of the institution where he has been under treatment and has been so discharged, shall immediately file with the clerk of the Superior Court of the District of Columbia his sworn statement that, in his opinion, the person was not of unsound mind at the time of his discharge. The statement is sufficient to authorize the court to order the person restored to his former legal status as a person of sound mind. (Sept. 14, 1965, 79 Stat. 761, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(c)(3), 84 Stat. 567.)

AMENDMENT

1970—Section 150(c)(3) of Act July 29, 1970, Public Law 91-358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 21-301.

§ 21-592. Return to hospital of an escaped mentally ill person

When a person has been ordered confined in a hospital or institution for the mentally ill pursuant to this chapter and has left such hospital or institution without authorization or has failed to return as directed, the court which ordered confinement shall, upon the request of the administrator of such hospital or institution, order the return of such person to such hospital or institution. (Added, July 29, 1970, Pub. L. 91-358, § 150(c)(7)(A), title I, 84 Stat. 568.)

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 21-301.

Chapter 7.—PROPERTY OF MENTALLY ILL PERSONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11-501, 11-921.

§ 21-704. Contract for sale by adult in behalf of himself and mentally ill person

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16-2901.

§ 21-706. Suits by ancillary guardian

(a) Upon the granting of ancillary letters, the guardian may institute and prosecute to judgment any action in the courts of the District of Columbia, take possession of all property of his ward, and collect and receive all moneys belonging and due to him therein, give full receipt and acquittances for debts, and release all claims, liens, and mortgages belonging to the ward, on property in the District of Columbia, in the same manner as if his authority had been orginally conferred by the Superior Court of the District of Columbia.

(b) The guardian shall give security for the costs which may accrue in an action brought by him, in the same manner as other nonresidents bringing suit in the courts of the District. (Sept. 14, 1965, 79 Stat. 762, Pub. L. 89-183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91-358, title I, § 150(e), 84 Stat. 568.)

AMENDMENT

1970—Section 150(e) of Act July 29, 1970, Public Law 91-358, amended subsection (a) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101 and note to 21-301.

Chapter 9.—MENTALLY ILL PERSONS FOUND IN CERTAIN FEDERAL RESERVATIONS

§ 21-902. Commitments by special commissioners of certain district courts

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-903 to 21-906.

§ 21-903. Apprehension by certain officials of persons believed to be mentally ill; proceedings

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-902, 21-905, 21-906.

§ 21-904. Admission upon written application; right of release

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21-903, 21-906, 21-909.

§ 21–906. Examinations; adjudications; laws applicable; expense care and treatment

(a) The Superintendent of Saint Elizabeths Hospital shall promptly examine a person committed as provided by sections 21–902 and 21–903, and, if not found to be mentally ill, shall forthwith discharge him, or, if found to be mentally ill, shall return him to the State of his residence or to his relatives, if practicable.

(b) Proceedings for the adjudication of a person referred to by subsection (a) of this section, or of a person admitted to the hospital pursuant to section 21–904, as a mentally ill person, and for the appointment of a committee of his person or property, may be instituted in the Superior Court of the District of Columbia by the Secretary of Health, Education, and Welfare or by a party interest. The laws of the District of Columbia apply to the proceedings. This chapter does not impose upon the District of Columbia the expense of care and treatment of a person apprehended, detained, or committed under this chapter, unless the person is a resident of the District of Columbia as defined by subsection (b) of section 21–551. (Sept. 14, 1965, 79 Stat. 765, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(f), 84 Stat. 568.)

AMENDMENT

1970—Section 150(f) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 21–301.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21–904.

§ 21–907. Transfer of military personnel

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21–902.

Chapter 11.—COMMITMENT AND MAINTENANCE OF SUBSTANTIALLY RETARDED PERSONS

Sec.

21–1102. Persons received in Forest Haven; age limit.
21–1103. Petition as to substantial retardation; contents; verification; notice; process.
21–1108. Dismissal and discharge, or placement in Forest Haven; controlling considerations.
21–1108A. Voluntary admission to Forest Haven.
21–1114. Proceeding when child brought before Family Division appears substantially retarded.
21–1117. Separate docket of cases brought under section 21–1103; reports of commissions.
21–1118. Transfer of substantially retarded from National Training Schools for Boys or Girls.
21–1121. Citation, order, or process on patients to be served only by superintendent.
21–1122. Approval of patients' contracts, etc., by court.

AMENDMENTS

1970—Section 2(a)(17) of Act Oct. 22, 1970, Pub. L. 91–490, amended chapter heading by striking out "Feeble-Minded" and inserting in lieu thereof "Substantially Retarded".

Section 2(a)(3)(B) of Act Oct. 22, 1970, Pub. L. 91–490, inserted a new item relating to section 21–1108A.

Section 2(a)(9)–(16) of Act Oct. 22, 1970, Pub. L. 91–490, amended analysis as follows:

(1) by striking out "District Training School" in items relating to sections 21–1102 and 21–1108 and inserting in lieu thereof "Forest Haven";

(2) by striking out "feeble-mindedness" in the item relating to section 21–1103 and inserting in lieu thereof "substantial retardation";

(3) by striking out "feeble-minded" in the items relating to sections 21–1114 and 21–1118 and inserting in lieu thereof "substantially retarded";

(4) by striking out "of feeble-minded cases" in the item relating to section 21–1117 and inserting in lieu thereof "of cases brought under section 21–1103";

(5) by striking out "inmates" and "inmates'" in the items relating to sections 21–1121 and 21–1122 and inserting in lieu thereof "patients" and "patients'", respectively.

Section 150(g)(11) of Act July 29, 1970, Public Law 91–358 amended chapter hearing by striking out "Feeble-minded" and inserting in lieu thereof "Substantially Retarded."

Section 150(g)(10) of Act July 29, 1970, Public Law 91–358 amended analysis as follows:

(A) by striking out "of District Court as to feeble-mindedness" in the item relating to section 21–1103 and inserting in lieu thereof "as to substantial retardation", and

(B) by striking out "before juvenile court appears feeble-minded" in the item relating to section 21–1114 and inserting in lieu thereof "before Family Division appears substantially retarded", and

(C) by striking out "feeble-minded" in the items relating to sections 21–1117 and 21–1118 and inserting in lieu thereof "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–501, 11–921, 11–1101, 16–2315, 16–2321.

§ 21–1101. Definitions

For purposes of this chapter—

"Forest Haven" means the institution established pursuant to section 32–601, and designated "Forest Haven" by section 32–602, or any successor to that institution; and

"substantially retarded person" means any person afflicted with mental defectiveness from birth or from an early age, so pronounced that he is incapable of managing himself and his affairs, and who requires supervision, control, and care for his own welfare, for the welfare of others, or for the welfare of the community, and who is not insane nor of unsound mind to such an extent as to require his commitment to a hospital for the mentally ill. (Sept. 14, 1965, 79 Stat. 766, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(g)(1)(A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(4), 84 Stat. 1088.)

AMENDMENTS

1970—Section 2(a)(4) of Act Oct. 22, 1970, Pub. L. 91–490, amended section to read as above set out. For provisions of section prior to 1970 amendments, see 1967 of the code.

Section 150(g)(1)(A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded."

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–2301.

§ 21–1102. Persons received in Forest Haven; age limit

Subject to such regulations as the District of Columbia Council adopts, and pursuant to this chapter and chapter 6 of Title 32, substantially retarded persons of not more than 45 years of age at the time

of commitment shall be received into Forest Haven. (Sept. 14, 1965, 79 Stat. 766, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(g)(1)(A), (2), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(1)(2)(9), 84 Stat. 1087, 1089.)

AMENDMENTS

1970—Section 2(a)(1)(2)(9) of Act Oct. 22, 1970, Pub. L. 91–490 amended section (1) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded", (2) by striking out "the District Training School" and inserting in lieu thereof "Forest Haven", and (3) by striking out "District Training School" in the heading and inserting in lieu thereof "Forest Haven".

Section 150(g)(1)(A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

Sec. 150(g)(2) of same act amended section, also, by striking out "Department of Public Welfare" and inserting in lieu "District of Columbia Council".

EFFECTIVE DATE OF 1970 AMENDMENTS BY PUB. L. 91–358

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(202) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 21–1103. Petition as to substantial retardation; contents; verification; notice; process

(a) When a person who is a resident of the District of Columbia is supposed to be substantially retarded, his guardian, or a relative, or a reputable citizen of the District of Columbia may file with the clerk of the Superior Court of the District of Columbia a petition, in writing, setting forth:

(1) that the person named in the petition is substantially retarded;

(2) such other facts as are necessary to bring the person within the purview of this chapter;

(3) the name and address of any person actually supervising, caring for, or supporting the person, or that the name and address thereof are unknown to the petitioner;

(4) the name and address of any person legally chargeable with the supervision, care, or support of the person, or that the name and address thereof are unknown to the petitioner;

(5) the names and addresses of the parents or guardians, or that they are unknown to the petitioner; and

(6) whether or not the person has been examined by a qualified physician having personal knowledge of his condition.

The petition shall be verified by affidavit, which is sufficient if it states that it is based upon information and belief.

* * * * *

(As amended, July 29, 1970, Pub. L. 91–358, title I, § 150(g)(1)(A)(3), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(1)(10), 84 Stat. 1087, 1089.)

AMENDMENTS

1970—Section 2(a)(1)(10) of Act Oct. 22, 1970, Pub. L. 91–490, amended section (1) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded", and (2) by striking out "feeble-mindedness" in the heading and inserting in lieu thereof "substantial retardation".

Section 150(g)(1)(A) of Act July 29, 1970, Pub. L. 91–358, amended subsection (a) by striking out "feeble-minded" and inserting in lieu "substantially retarded".

Sec. 150(g)(3) further amended section as follows:

(A) by striking out "United States District Court for the District of Columbia" in subsection (a) and inserting in lieu thereof "Superior Court of the District of Columbia", and

(B) by striking out "of District Court as to feeble-mindedness" in the section heading and inserting in lieu thereof "as to substantial retardation".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101 and note to 21–301.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21–1104 to 21–1107, 21–1108A, 21–1117, 21–1118.

§ 21–1104. Summons; contents; answer not required; return day; service

The summons prescribed by section 21–1103 shall require all persons upon whom it is served to appear personally at the time and place stated therein and to bring into court the alleged substantially retarded person. A written answer to the petition is not required, but the cause shall stand for hearing upon the petition on the return day of the summons. The summons shall be made returnable at any time within 20 days after the date thereof. Service of process upon any of the persons named in the petition or whose names are endorsed thereon is not necessary if they appear or are brought before the court personally without service of summons. The summons may be served by any officer authorized by law to serve processes of the Superior Court of the District of Columbia. (Sept. 14, 1965, 79 Stat. 767, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(g)(1)(A)(4), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(1), 84 Stat. 1087.)

AMENDMENTS

1970—Section 2(a)(1) of Act Oct. 22, 1970, Pub. L. 91–490, amended section by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded".

Section 150(g)(1)(A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

Section 150(g)(4) of Act of July 29, 1970, Public Law 91–358, further amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENTS BY PUB. L. 91–358

See note preceding section 11–101 and note to 21–301.

§ 21–1105. Appointment and qualifications of physicians; examination; certificate

Pursuant to the filing of a petition under section 21–1103, the court shall appoint two physicians, at least one of whom is skilled in the diagnosis and treatment of mental diseases, to make an examination of the alleged substantially retarded person to determine his mental and physical condition. Their certificate shall be filed with the court on or before the hearing on the petition. The persons so appointed may make such personal examination of him as will enable them to offer an opinion as to his physical and mental condition. A certificate

may not be made by them until after the examination. (Sept. 14, 1965, 79 Stat. 767, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(g)(1)(A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(1), 84 Stat. 1087.)

AMENDMENTS

1970—Section 2(a)(1) of Act Oct. 22, 1970, Pub. L. 91–490, amended section by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded".

Section 150(g)(1)(A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

§ 21–1106. Warrant to take into custody; detention or temporary guardianship; place of detention

Pursuant to the filing of a petition under section 21–1103, or upon motion at any time thereafter, where it is made to appear to the court by evidence given under oath that it is for the best interest of the alleged substantially retarded person or of other persons or of the community that he be at once taken into custody, or that the service of summons will be ineffectual to secure his presence, a warrant may issue on the order of the court directing that he be taken into custody and brought before the court forthwith or at such time and place as the court appoints. Pending the hearing of the petition, the court may order the detention of the alleged substantially retarded person, or the placing of him under temporary guardianship of a suitable person, on the latter person's entering into a recognizance for his appearance, as the court deems proper. Pending the hearing of the petition, the alleged substantially retarded person may not be detained in a place provided for the detention of persons charged with or convicted of a criminal or quasi-criminal offense. (Sept. 14, 1965, 79 Stat. 768, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(g)(1)(A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(1), 84 Stat. 1087.)

AMENDMENTS

1970—Section 2(a)(1) of Act Oct. 22, 1970, Pub. L. 91–490, amended section by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded".

Section 150(g)(1)(A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

§ 21–1107. Hearing; continuances; character of proofs; jury trial

After the filing of a petition under section 21–1103 and pending the final disposition of the case, the court may continue the hearing from time to time. The court shall take proofs as to the financial circumstances of the alleged substantially retarded persons and of his relatives legally liable for his support, and as to the alleged condition of the person and his personal and family history, and shall fully investigate the facts before making an order. When a jury is not required, the court shall determine the question of whether the person is substantially retarded. If the court deems it necessary, or if the alleged substantially retarded person or a relative or a person with whom he resides so demands, a jury shall be summoned to determine the question of whether the person is substantially retarded. The jury shall be selected from the jurors in attendance upon the court or a special jury may be summoned to determine the question. (Sept. 14, 1965, 79 Stat. 768, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(g)(1)(A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(1), 84 Stat. 1087.)

AMENDMENTS

1970—Section 2(a)(1) of Act Oct. 22, 1970, Pub. L. 91–490, amended section by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded".

Section 150(g)(1)(A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21–1108.

§ 21–1108. Dismissal and discharge, or placement in Forest Haven; controlling considerations

Where, at a hearing under section 21–1107, the court or the jury finds that the alleged substantially retarded person is not substantially retarded as defined by this chapter, the court shall order the petition dismissed and the person discharged. Where the court or the jury finds that the alleged substantially retarded person is substantially retarded and subject to be dealt with under this chapter, have[1] regard to all the circumstances appearing at the hearing, the controlling factor throughout the proceedings being the welfare of the persons of the community, the court shall enter a decree directing that the substantially retarded person be placed in Forest Haven. The decree so entered is binding upon all persons whom it may concern until rescinded or otherwise superseded or set aside. (Sept. 14, 1965, 79 Stat. 768, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(g)(1)(A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(1)(2)(11), 84 Stat. 1087, 1089.)

AMENDMENTS

1970—Section 2(a)(1)(2)(11) of Act Oct. 22, 1970, Pub. L. 91–490, amended section (1) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded", (2) by striking out "the District Training School" and inserting in lieu thereof "Forest Haven", and (3) by striking out "District Training School" in the heading and inserting in lieu thereof "Forest Haven".

Section 150(g)(1)(A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21–1109.

§ 21–1108A. Voluntary admission to Forest Haven

(a) The Director of Public Welfare (hereinafter in this section referred to as the "Director") may

[1] So in original. Probably should read "having".

admit a person to Forest Haven as a patient under this section only if—

(1) such person is certified by the Director of Public Health to be substantially retarded and in need of care at Forest Haven;

(2) such person either by himself, his parents, his spouse, or his legal guardian makes written application for admission to Forest Haven; and

(3) any contract required by subsection (d) has been executed.

(b) Any person admitted to Forest Haven pursuant to subsection (a) of this section shall be released therefrom no later than five days after receipt by the Superintendent of Forest Haven of a written request for release, except that if within such five-day period a petition concerning such person, as provided by section 21–1103, is filed in the United States District Court for the District of Columbia, such person shall be detained until a final judgment is entered by the court upon such petition.

(c) The Director may discharge any patient of Forest Haven admitted under this section if the Director is satisfied that such discharge will not adversely affect the welfare or interests of the person, the community, or others.

(d) (1) If the Director finds that any person with respect to whom an application for admission to Forest Haven has been made, as provided in this section, or any parent, spouse, adult child, or legal guardian of such person, is able to pay all or any part of the cost of maintenance and care of such person, the Director shall not admit such person unless a contract for payment, satisfactory to the Director, is executed by such person, parent, spouse, adult child, or legal guardian.

(2) The Director is authorized to enter into any agreement he deems necessary with any applicant to become a patient in Forest Haven, or with his parent, spouse, adult child, or legal guardian, for payment to the District of Columbia of all or part of the cost of such maintenance and care. Upon default of payment provided by any contract entered into under this section, the Director is authorized to discharge the patient of Forest Haven with respect to whose cost of maintenance and care the contract was entered into, and, in addition, he may utilize the procedures provided for in sections 21–1110 and 21–1111 to secure payment.

(e) The District of Columbia Council is authorized to issue regulations to carry out the purposes of this section.

(f) The authority contained in this section shall extend to January 1, 1975, unless repealed prior to that date. (Added Oct. 22, 1970, Pub. L. 91–490, § 2(a)(3)(A), 84 Stat. 1087.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21–1110, 21–1111.

§ 21–1109. Private and public patients; bond for support and maintenance; sufficiency and justification of sureties

(a) If, at the time of or before the making of an order for placement in Forest Haven pursuant to section 21–1108, a bond in the penal sum of $1,000, executed by a surety company authorized to do business in the District of Columbia, or by two or more sureties to be approved by the court, and conditioned for the payment of the support and maintenance of the person in the manner prescribed by law, is delivered to the court, together with the sum of $50 as an advance payment toward the support of the patient, the court shall order the admission of the person as a private patient. If the bond and advance payment are not given, the court shall order the admission of the person as a public patient. The bond and advance payment, together with the order of admission and bond, shall be transmitted by the clerk of the court to the Superintendent of Forest Haven. Until the bond and advance payment are delivered to the Superintendent, he shall admit the person to the institution only as a public patient.

* * * * *

(As amended, July 29, 1970, Pub. L. 91–358, title I, § 159(g)(5), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(2), 84 Stat. 1087.)

AMENDMENTS

1970—Section 2(a)(2) of Act Oct. 22, 1970, Pub. L. 91–490, amended section by striking out "the District Training School" and inserting in lieu thereof "Forest Haven".

Section 150(g)(5) of Act July 29, 1970, Public Law 91–358 amended subsection (a) by striking out "running to the United States".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101 and note to 21–301.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21–1112.

§ 21–1110. Liability of estate of public patient for maintenance

When the court orders the admission of a person to Forest Haven as a public patient or when a person is admitted to Forest Haven as a patient under section 21–1108A, and it appears then or thereafter that the patient has an estate out of which the Government may be reimbursed for his maintenance, in whole or in part, the court shall order the payment out of the estate of the whole or such part of the cost of maintenance of the patient at the institution as it deems just, regard being had for the needs of those having a legal right to support out of the estate. The order shall remain in full force and effect unless modified by the court. Upon the death of the substantially retarded person while an inmate at the institution, or within five years after his discharge therefrom, his estate is liable to the District of Columbia for the cost of his maintenance at the institution, and the claim of the District of Columbia is a preferred claim. (Sept. 14, 1965, 79 Stat. 769, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(g)(1)(A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(1)(2)(5), 84 Stat. 1087, 1088.)

AMENDMENTS

1970—Section 2(a)(1)(2)(5) of Act Oct. 22, 1970, Pub. L. 91–490, amended section (1) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded", (2) by striking out "the District Training School" and inserting in lieu thereof "Forest Haven", and (3) by inserting in the first sentence immediately after "as a public patient" the following: "or when a person is admitted to Forest Haven as a patient under section 21–1108A".

Section 150(g)(1)(A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21–1108A, 21–1111.

§ 21–1111. Proceedings to charge relatives legally responsible for maintenance of public patient; collection of maintenance payments; enforcement of order; liability of decedent's estate

(a) When a court orders the admission of a person to Forest Haven as a public patient or when a person is admitted to Forest Haven as a patient under section 21–1108A, and the court finds at any time that the patient does not have an estate out of which the District of Columbia may be fully reimbursed for his maintenance, a parent, spouse, and adult children of the substantially retarded person, if of sufficient financial ability, shall pay the cost to the District of Columbia of his maintenance at the institution. The Commissioner of the District of Columbia may petition the court, during the commitment of the substantially retarded person to the institution, to direct any of those relatives to pay the District of Columbia, in whole or in part, for his maintenance at the institution. They may not be required to pay more than the actual cost to the District of Columbia of his maintenance.

(b) When the court finds that a relative specified by subsection (a) of this section is able to pay for the maintenance of the substantially retarded person, in whole or in part, it may make an order requiring payment by him or all the relatives of such sums as it finds that he or they are reasonably able to pay and as may be necessary to provide for his maintenance. The order shall require the payment of the sums to the Finance Office of the Department of General Administration, or its successor, or its authorized representative or agency, of the District monthly, as the court directs. The Finance Office, or its successor, or its authorized representative or agency, as the case may be, shall collect the sums due under this section and section 21–1110, and turn them into the Treasury of the United States to the credit of the District of Columbia.

(c) If a relative made liable for the maintenance of the substantially retarded person fails to provide or pay for the maintenance, or his part thereof, in accordance with the order of the court, the court shall issue to him a citation to show cause why he should not be adjudged in contempt. The citation shall be served at least 10 days before the hearing thereon.

(d) An order issued under this session may be enforced against any property of a relative made liable for the maintenance of the substantially retarded person, in the same way as if it were an order for temporary alimony in a divorce case.

(e) Upon the death of a relative ordered by the court to pay for the maintenance of the substantially retarded person in whole or in part, the estate of the relative is liable to the District of Columbia for the unpaid amount due the District of Columbia under the order of court at the time of his death, and the claim of the District of Columbia is a preferred claim against his estate. (Sept. 14, 1965, 79 Stat. 769, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(g)(1)(A), (6), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(1)(2)(6), 84 Stat. 1087, 1089.)

AMENDMENTS

1970—Section 2(a)(1)(2)(6) of Act Oct. 22, 1970, Pub. L. 91–490, amended section (1) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded", (2) by striking out "the District Training School" and inserting in lieu thereof "Forest Haven", and (3) by striking out "and finds" in the first sentence and inserting in lieu thereof "or when a person is admitted to Forest Haven as a patient under section 21–1108A, and the court finds".

Section 150(g)(1)(A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

Section 150(g)(6) of Act July 29, 1970, Public Law 91–358 further amended subsection (a) by striking out "Commissioners" and inserting "Commissioner".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21–1108A.

§ 21–1112. Public patients may become private patients by filing bond and paying advance

When a person is admitted to Forest Haven as a public patient, and thereafter the bond and advance payment referred to in section 21–1109 are executed and delivered to the court, the court shall make an order changing the status of the person from a public to a private patient. (Sept. 14, 1965, 79 Stat. 770, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(2), 84 Stat. 1087.)

AMENDMENT

1970—Section 2(a)(2) of Act Oct. 22, 1970, Pub. L. 91–490, amended section by striking out "the District Training School" and inserting in lieu thereof "Forest Haven".

§ 21–1113. Restrictions on discharge; petition for discharge; causes for discharge; superintendent to be notified; notice of variation of order; denial on[1] one petition not a bar to another

(a) A substantially retarded person admitted to Forest Haven pursuant to an order of court may not be discharged therefrom except as provided by this section, but the right of petition for the writ of habeas corpus may not be abridged.

(b) After the admission of a substantially retarded person pursuant to an order of court provided by this chapter, a relative or friend of the substantially retarded person, or a reputable citizen, or the superintendent of the institution, or the Department of Public Welfare, may petition the court that entered the order of admission to discharge the substantially retarded person, or to vary the order of the court admitting him to the institution.

(c) When, on the hearing of a petition filed pursuant to subsection (b) of this section, the court is satisfied that the welfare of the substantially retarded person or of the other persons or of the community requires his discharge or a variation of the order, it may enter an order of discharge or variation as it deems proper.

[1] So in original. Probably should read "of".

(d) Discharges and variations of orders may be ordered or made if:

(1) the person adjudged to be substantially retarded is not substantially retarded; or

(2) the person has so far improved as to be capable of caring for himself; or

(3) the relatives or friends of the substantially retarded person are able and willing to supervise, control, care for, and support him, and request his discharge, and, in the judgment of the Superintendent of Forest Haven, evil consequences are not likely to follow the discharge.

(e) The enumeration of grounds of discharge or variation by subsection (d) of this section does not exclude other grounds of discharge or variation which the court deems adequate, having regard for the welfare of the person concerned or of other persons or of the community.

(f) On a petition for discharge or variation filed pursuant to this section, the court may discharge the substantially retarded person from all supervision, control, and care, or make such variation of the order as to maintenance as the court deems fit under all the circumstances appearing at the hearing of the petition.

(g) The Superintendent of Forest Haven shall be notified of the time and place of hearing on a petition for discharge or variation filed pursuant to this section, as the court directs, and an order of discharge or variation may not be entered without giving the Superintendent a reasonable opportunity to be heard. The court may notify such other persons, relatives, and friends of the substantially retarded person as it deems proper, of the time and place of the hearing on the petition.

(h) A person may not be charged with any greater degree of financial responsibility for the support of a substantially retarded person by variation of the order as to maintenance without notice and a reasonable opportunity to be heard.

(i) The denial of one petition for discharge or variation is not a bar to another petition on the same or different ground filed within a reasonable time thereafter, the reasonable time to be determined by the court in its discretion, discouraging frequent, repeated, frivolous, ill-founded petitions for discharge or variation of a prior order. (Sept. 14, 1965, 79 Stat. 770, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(g)(1)(A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(1), (2), 84 Stat. 1087.)

AMENDMENTS

1970—Section 2(a)(1)(2) of Act Oct. 22, 1970, Pub. L. 91–490, amended section (1) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded", and (2) by striking out "the District Training School" and inserting in lieu thereof "Forest Haven".

Section 150(g)(1)(A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

§ 21–1114. Proceeding when child brought before Family Division appears substantially retarded

When a child is brought before the Family Division of the Superior Court upon allegations that he is delinquent, neglected, or in need of supervision, and it appears to the court, on the testimony of a physician or psychologist or other evidence, that the child is substantially retarded within the meaning of this chapter, the court may adjourn the proceedings, other than proceedings on a motion to transfer pursuant to section 16–2307, and direct a suitable officer of the court or other suitable reputable person to file a petition under this chapter. The court may order that, pending the preparation, filing, and hearing of the petition, the child be detained in a place of safety, or be placed under the guardianship of a suitable person, if that person enters into a recognizance for his appearance. (Sept. 14, 1965, 79 Stat. 771, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(g)(7), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(1)(12), 84 Stat. 1087.)

AMENDMENT

1970—Section 2(a)(1)(12) of Act Oct. 22, 1970, Pub. L. 91–490, amended section (1) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded", and (2) by striking of "feeble-minded" in the heading and inserting in lieu thereof "substantially retarded."

Section 150(g)(7) of Act July 29, 1970, Public Law 91–358 amended section (A) by striking out "juvenile court of the District of Columbia as a dependent or delinquent child" and inserting in lieu thereof "Family Division of the Superior Court upon allegations that he is delinquent, neglected, or in need of supervision",

(B) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded",

(C) by inserting ", other than proceedings on a motion to transfer pursuant to section 16–2307," after "the proceedings" in the first sentence, and

(D) by striking out "brought before juvenile court appears feeble-minded" in the section heading and inserting in lieu thereof "brought before Family Division appears substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

§ 21–1115. Inquiry under this chapter if person convicted of offense

(a) On the conviction by a court of record of competent jurisdiction of a person of an offense, or of a violation of an ordinance which is in whole or in part a violation of a statute of the District of Columbia, the court when satisfied on the testimony of a physician or a psychologist or other evidence that the person is substantially retarded within the meaning of this chapter, may suspend sentence, or suspend the entering of an order sending the person to a jail, prison, or reformatory, or to a training or industrial school, and direct that a petition be filed pursuant to this chapter.

(b) When the court directs a petition to be filed pursuant to subsection (a) of this section, it may order that, pending the preparation, filing and hearing of the petition, the person be detained in a place of safety, or be placed under the guardianship of a suitable person, if that person enters into a recognizance for his appearance.

(c) Where, upon the hearing of a petition filed pursuant to this section or pursuant to a subsequent hearing under this chapter, the person is found not to be substantially retarded, the court shall impose sentence. (Sept. 14, 1965, 79 Stat. 771, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(g)(1)(A), 84 Stat.

568; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(1), 84 Stat. 1087.)

AMENDMENTS

1970—Section 2(a)(1) of Act Oct. 22, 1970, Pub. L. 91–490, amended section by striking out "feeble-minded" and inserting in lieu thereof substantially retarded".

Section 150(g)(1)(A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

§ 21–1116. Transfer to Saint Elizabeths Hospital when person becomes insane

When a person becomes insane while confined in Forest Haven and the Superintendent of the institution certifies in writing that the person is insane and is not a fit subject for care and maintenance at the institution, the Superior Court of the District of Columbia shall issue an order for his admission to Saint Elizabeths Hospital. The transfer does not affect the liability on a bond for private support, or an order for reimbursement for public support. All bonds and orders for reimbursement are liable and in force for the cost of maintenance at Saint Elizabeths Hospital. (Sept. 14, 1965, 79 Stat. 771, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(g)(8), 84 Stat. 569; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(2), 84 Stat. 1087.)

AMENDMENTS

1970—Section 2(a)(2) of Act Oct. 22, 1970, Pub. L. 91–490, amended section by striking out "the District Training School" and inserting in lieu thereof "Forest Haven".

Section 150(g)(8) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101 and note to 21–301.

§ 21–1117. Separate docket of cases brought under section 21–1103; reports of commissions

The court shall keep a separate docket of proceedings initiated by a petition filed section 21–1103, upon which shall be made such entries as will, together with the papers filed, preserve a complete record of each case, the original petitions, writs, and returns made thereto. The reports of commissions shall be filed with the clerk of the court. (Sept. 14, 1965, 79 Stat. 772, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(g)(9), 84 Stat. 569; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(7)(13), 84 Stat. 1089.)

AMENDMENTS

1970—Section 2(a)(7)(13) of Act Oct. 22, 1970, Pub. L. 91–490, amended section (1) by striking out "in feeble-mindedness" and inserting in lieu thereof "initiated by a petition filed under section 21–1103", and (2) by striking out "of feeble-minded cases" in the catchline and inserting in lieu thereof "of cases brought under section 21–1103".

Section 150(g)(9) of Act July 29, 1970, Public Law 91–358 amended section (A) by striking out "feeble-mindedness" and inserting in lieu thereof "substantial retardation", and

(B) by striking out "feeble-minded" in the section heading and inserting in lieu thereof "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

§ 21–1118. Transfer of substantially retarded from Natonal Training Schools for Boys or Girls

When the Superintendent of the National Training School for Boys or of the National Training School for Girls certifies to the court that in his opinion an inmate thereof is substantially retarded, the court shall permit him or any other reputable citizen of the District of Columbia to file a petition as provided by section 21–1103. If the inmate is found and adjudged to be substantially retarded, the court shall immediately issue an order for his admission as a public patient to Forest Haven. (Sept. 14, 1965, 79 Stat. 772, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(g)(1), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(1)(2)(14), 84 Stat. 1087, 1089.)

AMENDMENTS

1970—Section 2(a)(1)(2)(14) of Act Oct. 22, 1970, Pub. L. 91–490, amended section (1) by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded", (2) by striking out "the District Training School" and inserting in lieu thereof "Forest Haven", and (3) by striking out "feeble-minded" in the heading and inserting in lieu thereof "substantially retarded".

Section 150(g)(1)(A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

Sec. 150(g)(1)(B) amended the section heading in the same manner.

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

§ 21–1119. Removal from school of nonresidents of the District of Columbia

The Department of Public Welfare shall cause a person who has been admitted to Forest Haven, but who has not acquired a legal residence in the District, to be removed as soon as possible to the State in which he belongs. (Sept. 14, 1965, 79 Stat. 772, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; Oct. 22, 1970, Pub. L. 91–490, § 2(a)(2), 84 Stat. 1087.)

AMENDMENT

1970—Section 2(a)(2) of Act Oct. 22, 1970, Pub. L. 91–490, amended section by striking out "the District Training School" and inserting in lieu thereof "Forest Haven".

§ 21–1120. Paroles; conditions; expense; discretion of superintendent; violation; return

Under general conditions prescribed by the District of Columbia Council, the Superintendent of Forest Haven may grant paroles to patients in the institution where the conditions in the home in which they are to reside are satisfactory and where the paroles are deemed by the Superintendent as not injurious to the interests of the patients or the public. The expense of the vacation shall be borne by the guardian, relatives, or other persons responsible for the care of the patient while on vacation. The Superintendent may grant a parole for an indefinite period to a patient who has improved sufficiently to warrant the opportunity and when satisfactory supervision for the patient while on leave is assured. If the conditions of a parole granted under this chapter are violated, the patient may be taken up and returned as an escaped patient. (Sept. 14, 1965, 79 Stat. 772, Pub. L. 89–183, § 1, eff. Jan. 1,

1966; July 29, 1970, Pub. L. 91–358, title I, § 150 (g) (2), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91–490, § 2 (a) (2), 84 Stat. 1087.)

AMENDMENTS

1970—Section 2(a) (2) of Act Oct. 22, 1970, Pub. L. 91–490, amended section by striking out "the District Training School" and inserting in lieu thereof "Forest Haven".

Section 150(g) (2) of Act July 29, 1970, Public Law 91–358 amended section by striking out "Department of Public Welfare" and inserting in lieu "District of Columbia Council".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(203) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 21–1121. Citation, order, or process on patients to be served only by superintendent

Only the Superintendent of Forest Haven, or a person designated in writing by him, may serve a citation, order, or process required by law to be served on a patient of the institution. Return thereof to the court from which it issued may be made by the Superintendent. The service and return have the same force and effect as if it had been made by the United States marshal of the District of Columbia, or his deputy, or by the sheriff of the county in which the institution is located. (Sept. 14, 1965, 79 Stat. 772, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; Oct. 22, 1970, Pub. L. 91–490, § 2(a) (2) (8) (15), 84 Stat. 1087, 1089.)

AMENDMENT

1970—Section 2(a) (2) (8) (15) of Act Oct. 22, 1970, Pub. L. 91–490, amended section (1) by striking out "the District Training School" and inserting in lieu thereof "Forest Haven", (2) by striking out "and inmate" and inserting in lieu thereof "a patient", and (3) by striking out "inmates" in the heading and inserting in lieu thereof "patients".

§ 21–1122. Approval of patients' contracts, etc., by court

A public or private patient in Forest Haven may not be allowed to execute a contract, deed, will, or other instrument unless the execution has first been allowed and approved by an order entered of record by the Superior Court of the District of Columbia. A certified copy of the order shall be furnished to the Superintendent of the institution at the time of the execution of the instrument.

The order of the court is evidence only of the capacity of the patient to make the instrument. (Sept. 14, 1965, 79 Stat. 773, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(g) (8), 84 Stat. 569; Oct. 22, 1970, Pub. L. 91–490, § 2(a) (2) (16), 84 Stat. 1087, 1889.)

AMENDMENTS

1970—Section 2(a) (2) (16) of Act Oct. 22, 1970, Pub. L. 91–490, amended section (1) by striking out "the District Training School" and inserting in lieu thereof "Forest Haven", and (2) by striking out "inmates' " in the heading and insertng in lieu thereof "patients' ".

Section 150(g) (8) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101 and note to 21–301.

§ 21–1123. Offenses and penalties

Whoever:

(1) knowingly contrives, or conspires to have a person adjudged substantially retarded under the provisions of this chapter, unlawfully and improperly; or

(2) violates a provisions[1] of this chapter—

shall be fined not more than $1,000 or imprisoned not more than one year, or both. (Sept. 14, 1965, 79 Stat. 773, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(g) (1) (A), 84 Stat. 568; Oct. 22, 1970, Pub. L. 91–490, § 2(a) (1), 84 Stat. 1087.)

AMENDMENTS

1970—Section 2(a) (1) of Act Oct. 22, 1970, Pub. L. 91–490, amended section by striking out "feeble-minded" and inserting in lieu thereof "substantially retarded".

Section 150(g) (1) (A) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "feeble-minded" and inserting in lieu "substantially retarded".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

Chapter 13.—ALCOHOLICS AND DRUG ADDICTS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–501, 11–921.

§ 21–1301. Appointment of committee

When a person residing in the District of Columbia, and owning an estate, real or personal, situate therein, is alleged to be unfit, from the habitual use of intoxicating liquors, opium, cocaine, or similar substance, or compound or derivative thereof, to manage or control his estate properly, the Superior Court of the District of Columbia, on the petition of a creditor or relative of the person, or if there is not a creditor or relative, upon the petition of a person living in the District of Columbia, and upon summons being served upon the person alleged to be unfit, commanding him to appear and answer the petition, may order a jury to be summoned to ascertain whether the person is an alcoholic or addicted to the habitual use of opium, cocaine, or similar substance or compound derivative thereof and unfit from any of these causes to manage and control his property. If the jury finds that the person is an alcoholic or a habitual user of opium, cocaine, or similar substance or a compound or derivative thereof and unfit to manage or control his property, the finding, when confirmed by the court, shall be entered of record in the cause, and the court shall thereupon appoint a fit person to be committee of the person so declared unfit to manage or control his property. (Sept. 14, 1965, 79 Stat. 773, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(h) (1), 84 Stat. 569.)

AMENDMENT

1970—Section 150(h) (1) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United

[1] So in original. Probably should read "provision".

States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 21–301.

§ 21–1302. Bond; powers and duties

The committee before entering upon the discharge of his duties shall execute a bond, with surety, to be approved by the court or a judge thereof, in a penalty equal to the amount of the personal property and the yearly rents to be derived from the real estate of the person, conditioned for the faithful performance of his duties as the committee. He shall have control of the estate, real and personal, with power to collect all debts due the alcoholic or drug addict, and to adjust and settle all accounts owing by him, and to sue and be sued in his representative capacity. He shall apply the annual income of the estate to the support of the person, and the maintenance of his family and education of his children; and shall in all other respects perform the same duties and have the same rights as pertain to committees of lunatics and idiots. (Sept. 14, 1965, 79 Stat. 773, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(h)(2), 84 Stat. 569.)

AMENDMENT

1970—Section 150(h)(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out in the first sentence "to the United States".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 21–301.

Chapter 15.—CONSERVATORS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–501, 11–921.

§ 21–1501. Appointment of conservators

When an adult residing in or having property in the District of Columbia is unable, by reason of advanced age, mental weakness not amounting to unsoundness of mind, mental illness, as the latter term is defined by section 21–501, or physical incapacity, properly to care for his property, the Superior Court of the District of Columbia may, upon his petition or the sworn petition of one or more of his relatives or any other person or persons, appoint a fit person to be conservator of his property. (Sept. 14, 1965, 79 Stat. 774, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(i)(1), 84 Stat. 569.)

AMENDMENT

1970—Section 150(i)(1) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 21–301.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 20–351, 21–1502.

NOTES TO DECISIONS

Capacity to make a will

Provision in section 21–1507 voiding transfer of real and personal property by person subject to conservatorship does not render that person, per se, incapable of making valid will. *D. H. Rossi* v. *E. A. Fletcher* (1969, 418 F. 2d 1169, 135 U.S. App. D.C. 333; cert. denied 90 S. Ct. 568).

Congress in adopting provisions in section 18–102 that will was not valid unless person making it was of required age and at time of executing or acknowledging it was of sound and disposing mind and capable of executing valid deed or contract did not intend to deprive mentally competent person of testamentary capacity merely because he was subject to conservatorship. *Id.*

Colorable jurisdiction

A determination that conservator was properly appointed was correct where the initial appointments of guardian ad litem, temporary conservator and permanent conservator of person and estate were based on colorable jurisdiction. *E. D. Mitchell* v. *C. D. Ensor, et al.* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

Control over property in other jurisdiction

Local statutes cannot by themselves give conservator power to assert control over property in other jurisdictions, and local conservator has authority and power to take control over property located in another state only so far as allowed by comity of that state. *E. D. Mitchell* v. *C. D. Ensor, et al.* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

Determination of benefits accruing to estate

Determination as to benefits accruing to estate and size of estate for purposes of compensation of former conservators and guardian ad litem required that record be supplemented to determine extent conservators actually assumed, or had power to assume, control over appellant's stock and specific findings of fact as to whether value of her stock may have increased regardless of efforts of conservators and whether services of guardian and conservators actually inured to her benefit. *E. D. Mitchell* v. *C. D. Ensor, et al.* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

Discretion of trial judge

In a case where there is any property within District of Columbia, appointment of conservator is within discretion of trial judge in view of lack of statutory specification of the minimum amount of property necessary for appointment of conservator. *E. D. Mitchell* v. *C. D. Ensor, et al.* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

Where the appellant had $850 worth of property in the District, appointment of a conservator pursuant to statute governing guardians of property of mentally incompetent persons was not an abuse of discretion. *Id.*

Remand

Since this proceeding leading to the appointment of a conservator for the person and property of wife, the husband has returned to the United States and was residing in New Jersey, and since wife remained in her mother's home in New Jersey, the case would be remanded for determination as to whether District of Columbia conservatorship should be continued to protect parties' single asset in the District. *G. J. Davis* v. *B. Corrin* (1969, 417 F. 2d 1157, 135 U.S. App. D.C. 210).

Residence requirement

The evidence in this case on issue whether federal district court for the District of Columbia had jurisdiction to appoint a conservator for wife was sufficient authorize a finding that wife was a resident of the District, notwithstanding fact that the wife was being cared for by her mother in mother's home in New Jersey. *G. J. Davis* v. *B. Corrin* (1969, 417 F. 2d 1157, 135 U.S. App. D.C. 210).

§ 21–1502. Filing of petition; requirements; time and place of hearing; appointment of guardian ad litem

NOTES TO DECISIONS

Court's duties in relation to conservator

Court appointing conservators should be willing to receive complaints and reports from any source concerning alleged misconduct or conflict of interest. *C. M. Price and G. P. Marshall, Jr., etc.* v. *E. B. Williams et al.* (1968, 393 F. 2d 348, 129 U.S. App. D.C. 239).

Joint services of guardian and conservator

Permitting services of guardian ad litem to continue after permanent conservators were appointed was not

improper. *C. M. Price and G. P. Marshall, Jr., etc.* v. *E. B. Williams et al.* (1968, 393 F. 2d 348, 129 U.S. App. D.C. 239).

Liability of conservator

In a case where a bank honored checks drawn without authority by an incompetent upon account carried in the name of conservatorship estate, which had been created for the incompetent, and where the conservator recovered judgment against bank in the amount of the checks and the bank against the incompetent, who had been impleaded by bank, in same amount, refusal to require conservator to pay judgment recovered by bank against the incompetent was not error. *In re Appointment of a Conservation for B. Justice, Jr.; et ano. etc.* (1969, 418 F. 2d 1162, 135 U.S. App. D.C. 326).

Notice to husband

Under this section which requires that the district court shall cause at least 14 days' notice of hearing to be given to the person for whom a conservator is sought to be appointed, if he is not the petitioner, and to such other persons as the court directs, the husband of the person for whom a conservator was sought was not an indispensable party to the proceeding leading to the appointment of the conservator and failure to notify him of hearing did not vitiate that proceeding. *G. J. Davis* v. *B. Corrin* (1969, 417 F. 2d 1157, 135 U.S. App. D.C. 210).

Remand

Since this proceeding leading to the appointment of a conservator for the person and property of wife, the husband has returned to the United States and was residing in New Jersey, and since wife remained in her mother's home in New Jersey, the case would be remanded for determination as to whether District of Columbia conservatorship should be continued to protect parties' single asset in the District. *G. J. Davis* v. *B. Corrin* (1969, 417 F. 2d 1157, 135 U.S. App. D.C. 210).

Reversal on appeal

The Court of Appeals should not reverse lower court's decision regarding conservatorship matters unless a clear abuse of discretion is shown. *C. M. Price and G. P. Marshall, Jr., etc.* v. *E. B. Williams et al.* (1968, 393 F. 2d 348, 129 U.S. App. D.C. 239).

§ 21–1503. Bond; powers and duties

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21–1505.

NOTES TO DECISIONS

Control over property in other jurisdiction

Local statutes cannot by themselves give conservator power to assert control over property in other jurisdictions, and local conservator has authority and power to take control over property located in another state only so far as allowed by comity of that state. *E. D. Mitchell* v. *C. D. Ensor, et al.* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

Determination of benefits accruing to estate

Determination as to benefits accruing to estate and size of estate for purposes of compensation of former conservators and guardian ad litem required that record be supplemented to determine extent conservators actually assumed, or had power to assume, control over appellant's stock and specific findings of fact as to whether value of her stock may have increased regardless of efforts of conservators and whether services of guardian and conservators actually inured to her benefit. *E. D. Mitchell* v. *C. D. Ensor, et al.* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

Liability of conservator

In a case where a bank honored checks drawn without authority by an incompetent upon an account carried in the name of conservatorship estate, which had been created for the incompetent, and where the conservator recovered judgment against bank in the amount of the checks and the bank against the incompetent, who had been impleaded by bank, in same amount, refusal to require conservator to pay judgment recovered by bank against the incompetent was not error. *In re Appointment of a Conservator for B. Justice, Jr., et ano. etc.* (1969, 418 F. 2d 1162, 135 U.S. App. D.C. 326).

Reasonable compensation

A figure of 5% as a flexible rule of thumb for fixing reasonable compensation, in ordinary case, to guardians ad litem and conservators appointed pursuant to statute governing guardians of property of mentally incompetent persons, is permissible. *E. D. Mitchell* v. *C. D. Ensor, et al.* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

Remand

Since this proceeding leading to the appointment of a conservator for the person and property of wife, the husband has returned to the United States and was residing in New Jersey, and since wife remained in her mother's home in New Jersey, the case would be remanded for determination as to whether District of Columbia conservatorship should be continued to protect parties' single asset in the District. *G. J. Davis* v. *B. Corrin* (1969, 417 F. 2d 1157, 135 U.S. App. D.C. 210).

§ 21–1504. Discharge

NOTES TO DECISIONS

Reasonable compensation

A figure of 5% as a flexible rule of thumb for fixing reasonable compensation, in ordinary case, to guardians ad litem and conservators appointed pursuant to statute governing guardians of property of mentally incompetent persons, is permissible. *E. D. Mitchell* v. *C. D. Ensor, et al.* (1969, 412 F. 2d 155, 134 U.S. App. D.C. 24).

Title to property

There is no restriction upon district court, sitting in probate, which limits its power to adjudicate right to possession of personalty. *C. M. Price and G. P. Marshall, Jr., etc.* v. *E. B. Williams et al.* (1968, 393 F. 2d 348, 129 U.S. App. D.C. 239).

§ 21–1506. Personal welfare of person under conservatorship

The court may at any time order that the conservator or another person shall be responsible for the personal welfare of the person whose property is under conservatorship. In that event the conservator or other person, subject to the direction and control of the court, has the same powers and duties with respect to the personal welfare of the person whose property is under conservatorship as have the guardians of the persons or infants under guardianships. (Sept. 14, 1965, 79 Stat. 775, Pub. L. 89–183, § 1, eff. Jan. 1, 1966; July 29, 1970, Pub. L. 91–358, title I, § 150(i)(2), 84 Stat. 569.)

AMENDMENT

1970—Section 150(i)(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out "of the Civil Division".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 21–1507. Lis pendens

NOTES TO DECISIONS

Capacity to make a will

Provision in section 21–1507 voiding transfer of real and personal property by person subject to conservatorship, does not render that person, per se, incapable of making valid will. *D. H. Rossi* v. *E. A. Fletcher* (1969, 418 F. 2d 1169, 135 U.S. App. D.C. 333; cert. denied 90 S. Ct. 568).

Congress in adopting provisions in section 18–102 that will was not valid unless person making it was of required age and at time of executing or acknowledging it was of sound and disposing mind and capable of executing valid deed or contract did not intend to deprive mentally competent person of testamentary capacity merely because he was subject to conservatorship. *Id.*

Purpose of lis pendens

Purpose of filing lis pendens is, at least in part, to give constructive notice of pending suit or petition. *In re Appointment of a Conservator for B. Justice, Jr., et ano. etc.* (1969, 418 F. 2d 1162, 135 U.S. App. D.C. 326).

Filing of lis pendens is not required against one who has actual notice of suit or petition. *Id.*

PART IV

CRIMINAL LAW AND PROCEDURE

TITLE 22. CRIMINAL OFFENSES.
TITLE 23. CRIMINAL PROCEDURE.
TITLE 24. PRISONERS AND THEIR TREATMENT.

TITLE 22.—CRIMINAL OFFENSES

Chap. Sec.
18. Burglary 22–1801
20. Obscenity 22–2001

Chapter 1.—GENERAL PROVISIONS

Sec.
22–104a. Punishment of persons convicted of a felony with a prior record of at least two felony convictions—Definitions—Effect of convictions pardoned on the ground of innocence.
22–105a. Punishment of persons convicted of conspiracies to commit crimes—Proof—Conspiracies to commit crimes within or outside of the District.

§ 22–103. Attempts to commit crime.

NOTES TO DECISIONS

Attempted unauthorized use of motor vehicle

Attempted unauthorized use of a motor vehicle is a crime under statutes prohibiting the taking, use, operation, or removal of a vehicle without owner's consent and calling for punishment of whoever shall attempt to commit any crime, which attempt is not otherwise punishable. *B. O. Greenwood III* v. *United States* (D.C. App. 1967, 225 A. 2d 878).

Continuance

The granting or refusal of a continuance is largely left to discretion of the trial judge, and his decision will not be disturbed without a clear showing of abuse in the exercise of that discretion. *W. E. Smith* v. *United States* (D.C. App. 1967, 235 A. 2d 574).

Corroborating witness

Failure of prosecution to produce second officer who as a corroborating witness could only have testified to time and place of defendant's arrest for attempted procuring because he did not hear conversation between arresting officer and defendant was not error in view of prosecution's effort to secure a continuance because second officer was in another court and defendant's then counsel's willingness to proceed to trial in second officer's absence. *R. Blakney* v. *United States* (D.C. App. 1967, 225 A. 2d 654).

Elements of offense

The elements of the crime of false pretenses are a false representation, knowledge of its falsity, an intent to defraud, reliance on the misrepresentation by the defrauded party, and the obtaining of something of value. *J. R. Marganella* v. *United States* (D.C. App. 1970, 268 A. 2d 803).

Evidence

Evidence supported conviction for attempted unauthorized use of automobile. *N. Dickson* v. *United States* (D.C. App. 1967, 226 A. 2d 364).

Evidence supported conviction for attempted unauthorized use of motor vehicle. *B. O. Greenwood III* v. *United States* (D.C. App. 1967, 225 A. 2d 878).

Evidence—Sufficiency

Evidence, including testimony identifying defendant as one of two men attempting to pry open window with crowbar, is sufficient to sustain convictions for attempted second-degree burglary, destroying property and attempted petit larceny *H. Manning* v. *United States* (D.C. App. 1970, 270 A. 2d 504).

The evidence sustained conviction for attempted false pretenses involving misuse of a credit card. *J. R. Marganella* v. *United States* (D.C. App. 1970, 268 A. 2d 803).

In prosecution for attempted false pretenses involving misuse of credit card in connection with motel registration, the necessity of producing motel desk clerk was obviated by introduction of motel's records. *Id.*

In this case, the court held that testimony as to ownership of damaged vending machine, purportedly based on witness' own knowledge, was not hearsay and was sufficient to prove ownership as alleged in information charging malicious injuring of property and attempted petit larceny. *L. Killens* v. *United States* (D.C. App. 1970, 263 A. 2d 44).

In this case the evidence in prosecution of defendant for attempted burglarly permitted inference of an intent to commit a crime to be made by the jury who was found in warehouse amongst scattered papers, opened desk drawers and office machinery which had been moved into hall. *P. E. Hebble* v. *United States* (D.C. App. 1969, 257 A. 2d 483).

Evidence that tenant of apartment heard what sounded like someone attempting to enter vacant apartment and that defendant and companion were seen leaving building and fled when pursued by officer was sufficient to sustain conviction of attempted housebreaking. *T. H. Adams* v. *United States* (D.C. App. 1968, 245 A. 2d 640).

Evidence that fingerprints of defendant appeared on glass surface, which had once been outside surface of drugstore entrance was insufficient to sustain conviction of attempted housebreaking, destroying property, and petit larceny. *A. W. Townsley* v. *United States* (D.C. App. 1967, 236 F. 2d 63).

The record contains sufficient evidence from which the jury could have found or inferred that the car left by owner in the parking garage and the one driven onto the parking lot by appellant were one and the same. *F. E. Wesley* v. *United States* (D.C. App. 1967, 233 A. 2d 514).

Cigarettes found in defendants' possession, with same "wholesale numbers" as cigarettes left in store, but not otherwise identified as having come from store, had little, if any, probative value. *S. C. Davis and C. L. Colbert* v. *United States* (D.C. App. 1967, 230 A. 2d 485).

Evidence of defendants' physical and chronological proximity to scene of housebreaking, and their leaving at a trot, was insufficient to sustain conviction for attempted housebreaking and petit larceny. *Id.*

Inconsistent verdict

The trial court could have found defendant, who was carrying goods stolen from an apartment building, which he later abandoned when he attempted to flee, guilty of both attempted burglarly and petit larceny charges on inference of guilt raised by defendant's unexplained possession of recently stolen property or even on the basis of this inference the trier of the facts could have had a reasonable doubt that defendant had necessary criminal intent upon entering apartment building to be convicted of attempted burglarly, and thus verdicts of acquittal on

attempted burglary charge and guilty on petit larceny charge were not necessarily inconsistent or irreconcilable. *H. Barnes* v. *United States* (D.C. App. 1969, 254 A. 2d 724).

Evidence was sufficient to sustain petit larceny conviction. *Id.*

Information—Amendment

Where amendment of information charging attempted second-degree burglary, destroying private property, and petit larceny to reflect that property in question belonged to corporation in care and custody of individual, as opposed to individual alone as charged in original information, conformed to testimony at trial and no prejudice was occasioned by the defense, permitting the amendment was not error. *J. L. King* v. *United States* (D.C. App. 1970, 271 A. 2d 556).

Instructions

In a prosecution for attempted procuring involving contents of conversation that concededly took place between defendant and officer at street corner, instruction that if witness testified falsely concerning any material fact, about which the witness could not be reasonably mistaken, all testimony of such witness could be disregarded, except such parts as were corroborated by other testimony, was not plain error requiring reversal in absence of objection. *W. E. Smith* v. *United States* (D.C. App. 1970, 269 A. 2d 446).

In this case, instruction by trial court, in prosecution for attempted procuring, that jury must decide whether defendant had intent to procure female for immoral purposes, was proper when placed in context with entire charge as obviously referring to illegal sexual immoralities. *J. R. Langley* v. *United States* (D.C. App. 1970, 264 A. 2d 503).

In this case, since the jury had convicted defendant of more serious crime of attempted burglarly, any error in instruction on lesser included offense of unlawful entry was not demonstrated to be prejudicial. *P. E. Hebble* v. *United States* (D.C. App. 1969, 257 A. 2d 483).

Lapse of time between theft and arrest

Lapse of five days between theft of automobile and arrest of defendant operating it did not insulate him from criminal liability for attempted unauthorized use of motor vehicle. *B. O. Greenwood III* v. *United States* (D.C. App. 1967, 225 A. 2d 878).

Lesser included offense

Except for the requirement of intent to commit crime, unlawful entry is substantially identical to and hence lesser included offense of burglarly in second degree. *P. E. Hebble* v. *United States* (D.C. App. 1969, 257 A. 2d 483).

Procuring

In this case the evidence was sufficient to sustain convictions for attempted procuring. *J. R. Langley* v. *United States* (D.C. App. 1970, 264 A. 2d 503).

Proof of ownership

Any failure of prosecution to show who owned automobile involved in prosecution for attempted unauthorized use of motor vehicle did not preclude conviction where it was established that ownership was in some third party. *D. Dickson* v. *United States* (D.C. App. 1967, 226 A. 2d 364).

Prostitution

Showing that defendant and complaining witness bargained until they had agreed upon exchange of money, although uncertain in amount, for services of prostitute, and that immediately thereafter defendant led complaining witness a considerable distance to hotel unknown to witness where prostitute was supposedly waiting was sufficient evidence to sustain conviction for attempted procuring. *W. Walker, Jr.* v. *United States* (D.C. App. 1968, 248 A. 2d 187).

Review

Defendant could not be heard to complain on appeal of conviction for attempted unauthorized use of motor vehicle in view of proof of completion of offense of unauthorized use of the vehicle. *B. O. Greenwood III* v. *United States* (D.C. App. 1967, 225 A. 2d 878).

Sentences

Rule of lenity is to be applied, and concurrent sentences imposed for destruction of property and attempted second-degree burglary, since in this case both offenses involved single course of conduct, i.e., prying of window. *H. Manning* v. *United States* (D.C. App. 1970, 270 A. 2d 504).

Consecutive sentences could properly be imposed for attempted second-degree burglary and attempted petit larceny, since it is apparent from facts of case, including use of panel truck, that defendant intended to invade two distinct societal interests. *Id.*

Statutory provision for two-year mandatory minimum sentence for burglary do not operate to prevent prosecution and sentencing for lesser misdemeanors of attempted burglary in second degree, destroying private property, and petit larceny, for which offenses the defendant was actually sentenced for one-half year more than two-year felony minimum. *J. J. King* v. *United States* (D.C. App. 1970, 271 A. 2d 556).

In this case the court held that since the District of Columbia Code expressly limits maximum prison sentence for attempted burglary to one year and crimes of attempted second-degree burglary and malicious destruction of property are offenses against same societal interest and since there was nothing to show that offenses were animated by different criminal intents, defendant's convictions for attempted second-degree burglary and for malicious destruction of property with respective consecutive sentences of one year and six months are not appropriate case for cumulative punishment and case would be remanded for resentencing. *M. A. Johnson, Jr.* v. *United States* (D.C. App. 1970, 265 A. 2d 780).

Under the facts of this case where defendant's true crime was burglary in the second degree, a felony carrying a mandatory minimum sentence of two years, and prosecution reduced felony to the three separate misdemeanors of attempted burglary in second degree, destroying private property, and petit larceny, trial judge did not abuse discretion in imposing two consecutive one-year sentences and one concurrent one-year sentence following defendant's conviction on all three separate misdemeanors. *R. M. Weeks* v. *United States* (D.C. App. 1969, 252 A. 2d 907).

Store breaking

Evidence warranted conviction for attempted store breaking, where defendant's fingerprints were on top of paper bag which contained burglary tools and which was found beside broken skylight over store, that area was generally inaccessible to public, and that bag was dry although roof was damp. *E. Patten* v. *United States* (D.C. App. 1968, 248 A. 2d 182).

§ 22–104. Second conviction.

(a) If any person—

(1) is convicted of a criminal offense (other than a non-moving traffic offense) under a law applicable exclusively to the District of Columbia, and

(2) was previously convicted of a criminal offense under any law of the United States or of a State or territory of the United States which offense, at the time of the conviction referred to in paragraph (1), is the same as, constitutes, or necessarily includes, the offense referred to in that paragraph,

such person may be sentenced to pay a fine in an amount not more than one and one-half times the maximum fine prescribed for the conviction referred to in paragraph (1) and sentenced to imprisonment for a term not more than one and one-half times the maximum term of imprisonment prescribed for that conviction. If such person was previously convicted more than once of an offense

described in paragraph (2), he may be sentenced to pay a fine in an amount not more than three times the maximum fine prescribed for the conviction referred to in paragraph (1) and sentenced to imprisonment for a term not more than three times the maximum term of imprisonment prescribed for that conviction. No conviction with respect to which a person has been pardoned on the ground of innocence shall be taken into account in applying this section.

(b) This section shall not apply in the event of conflict with any other provision of law which provides an increased penalty for a specific offense by reason of a prior conviction of the same or any other offense. (Nov. 3, 1901, 31 Stat. 1337, ch. 854, § 907; July 29, 1970, Pub. L. 91–358, § 201(a), title II, 84 Stat. 598.)

AMENDMENT

1970—Section 201(a) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

APPLICABILITY OF AMENDMENT

Section 901(b)(3) of Pub. L. 91–358, provided as follows: (3) The amendments made by sections 201 [sections 22–104 and 22–104a] and 205 [sections 22–3202 and 22–3213] of this Act shall apply with respect to any person who commits an offense after the effective date of this Act. [For effective date see note preceding § 11–101.]

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–423.

NOTES TO DECISIONS

Notice

Defendant has right to be given notice of government's intention to prosecute as second offender and ask for heavier penalties under second offender statute; the notice should be formal; and informal notice, originating with court, acquiesced in by prosecution, with burden on defendant's counsel to convey notice to defendant, is insufficient. *S. Brandon, Jr.* v. *United States* (D.C. App. 1968, 239 A. 2d 159).

Practice with respect to second offender prosecutions

The practice of district attorney's office, when intending to prosecute as second offender, to file written notice to that effect, specifically referring to former conviction, its nature and date, and to deliver copy of such notice to defendant personally is approved. *S. Brandon, Jr.* v. *United States* (D.C. App. 1968, 239 A. 2d 159).

The practice of prosecuting defendant as second offender only on suggestion of trial court and not at suggestion of district attorney's office is disapproved. *Id.*

Proof of prior conviction

The admission of defendant's counsel, in answer to court's question, that defendant had prior conviction of either petit larceny or attempted petit larceny was not waiver of proof of prior conviction. *S. Brandon, Jr.* v. *United States* (D.C. App. 1968, 239 A. 2d 159).

Trial court's reference at bench conference to grand larceny in 1964, apparently based on information obtained from paper produced by prosecuting attorney, did not constitute proof of former conviction. *Id.*

Sentence

Sentence of defendant as second offender was invalid where defendant had no proper notice that he would be prosecuted as second offender, prosecutor did not intend to prosecute defendant as second offender and did so only at suggestion of trial court, an there was no proof of former conviction. *S. Brandon, Jr.* v. *United States* (D.C. App. 1968, 239 A. 2d 159).

§ 22–104a. Punishment of persons convicted of a felony with a prior record of at least two felony convictions—Definitions—Effect of convictions pardoned on the ground of innocence.

(a) If—

(1) any person (A) is convicted in the District of Columbia of a felony, and (B) before the commission of such felony, was convicted of at least two felonies; and

(2) the court is of the opinion that the history and character of such person and the nature and circumstances of his criminal conduct indicate that extended incarceration or lifetime supervision, or both, will best serve the public interest,

the court may, in lieu of any sentence otherwise authorized for the felony referred to in clause (A) of paragraph (1), impose such greater sentence as it deems necessary, including imprisonment for the natural life of such person.

(b) For purposes of paragraph (1) of subsection (a)—

(1) a person shall be considered as having been convicted of a felony if he was convicted (A) of a felony in a court of the District of Columbia or of the United States, or (B) in any other jurisdiction of a crime classified as a felony under the laws of that jurisdiction or punishable by imprisonment for more than two years; and

(2) a person shall be considered as having been convicted of two felonies if his initial sentencing under a conviction of one felony preceded the commission of the second felony for which he was convicted.

No conviction with respect to which a person has been pardoned on the ground of innocence shall be taken into account in applying this section. (Mar. 3, 1901, ch. 854, § 907A; as added July 29, 1970, Pub. L. 91–358, § 201(b), title II, 84 Stat. 599.)

APPLICABILITY OF AMENDMENT

Section 901(b)(3) of Pub. L. 91–358, provided as follows: (3) The amendments made by sections 201 [sections 22–104 and 22–104a] and 205 [sections 22–3202 and 22–3213] of this Act shall apply with respect to any person who commits an offense after the effective date of this Act. [For effective date, see note preceding § 11–101.]

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–423.

§ 22–105. Persons advising, inciting, or conniving at criminal offense to be charged as principals.

NOTES TO DECISIONS

Aid and abet

To sustain conviction of an aider and abettor for commission of the crime, it is only necessary that the defendant was associated with the principal offender in the venture and made a conscious effort to help it succeed. *In the matter of Reeder* (D.C. App. 1970, 264 A. 2d 893).

Evidence—Sufficiency

In this case, the evidence was sufficient to support juvenile court's finding that juvenile participated as an aider and abettor in assault with intent to commit robbery on a school teacher. *In the matter of Reeder* (D.C. App. 1970, 264 A. 2d 893).

Evidence was not sufficient to sustain a conviction for aiding and abetting petit larceny on a showing that at time officer observed suspected criminal activity defendant was standing near the right side of automobile at a point somewhere between automobile, which contained wine and beer allegedly stolen from store, and the store. *T. Williams and B. L. Short* v. *United States* (D.C. App. 1969, 254 A. 2d 722).

Evidence did not sustain conviction of petit larceny of wine and beer in violation of District Code. *Id.*

The evidence portrayed in a view most favorable to the Government, of defendant's presence at scene of crime, his slight association with actual perpetrator, and subsequent flight, did not sustain conviction for robbery. *J. L. Bailey* v. *United States* (1969, 416 F. 2d 1110, 135 U.S. App. D.C. 95).

Information—Validity of

Evidence was sufficient to prove that defendant aided and abetted the principal offender in sales and deliveries of drugs, in violation of law, and was not prejudiced by informations charging him alone as principal where there was adequate evidence to establish that principal offender committed violations charged, since statute provided that all persons aiding or abetting principal were to be charged as principals and not as accessories. *R. W. Mason* v. *United States* (D.C. App. 1969, 256 A. 2d 565).

Prosecution of aider and abettor

In this jurisdiction, an aider and abettor is prosecuted as a principal, and conviction of principal offender is not prerequisite to conviction of the aider and abettor. *J. L. Bailey* v. *United States* (1969, 416 F. 2d 1110, 135 U.S. App. D.C. 95).

§ 22–105a. Punishment of persons convicted of conspiracies to commit crimes—Proof—Conspiracies to commit crimes within or outside of the District.

(a) If two or more persons conspire either to commit a criminal offense or to defraud the District of Columbia or any court or agency thereof in any manner or for any purpose, each shall be fined not more than $10,000 or imprisoned not more than five years, or both, except that if the object of the conspiracy is a criminal offense punishable by less than five years, the maximum penalty for the conspiracy shall not exceed the maximum penalty provided for that offense.

(b) No person may be convicted of conspiracy unless an overt act is alleged and proved to have been committed by one of the conspirators pursuant to the conspiracy and to effect its purpose.

(c) When the object of a conspiracy contrived within the District of Columbia is to engage in conduct in a jurisdiction outside the District of Columbia which would constitute a criminal offense under an Act of Congress applicable exclusively to the District of Columbia if performed therein, the conspiracy is a violation of this section if (1) such conduct would also constitute a crime under the laws of the other jurisdiction if performed therein, or (2) such conduct would constitute a criminal offense under an Act of Congress exclusively applicable to the District of Columbia even if performed outside the District of Columbia.

(d) A conspiracy contrived in another jurisdiction to engage in conduct within the District of Columbia which would constitute a criminal offense under an Act of Congress exclusively applicable to the District of Columbia if performed within the District of Columbia is a violation of this section when an overt act pursuant to the conspiracy is committed within the District of Columbia. Under such circumstances, it is immaterial and no defense to a prosecution for conspiracy that the conduct which is the object of the conspiracy would not constitute a crime under the laws of the other jurisdiction. (Mar. 3, 1901, ch. 854, § 908 A; as added July 29, 1970, Pub. L. 91–358, § 202, title II, 84 Stat. 599.)

EFFECTIVE DATE

See note preceding section 11–101.

§ 22–109. Prosecutions.

NOTES TO DECISIONS

Information—Sufficiency of

Defendants, who were arrested after refusing to move out of corridor in House wing of Capitol building when ordered to do so by Capitol police, were entitled to know with certainty offense with which they were charged and possible penalty threatened and were entitled to definite reference to the law which they had allegedly violated, and thus where, notwithstanding request of defense, no one had given citation of statute under which prosecution was being had, other than statement of prosecutor that two sections were involved, convictions under section carrying lighter sentence, as requested by prosecutor, were required to be set aside. *D. Smith et al.* v. *District of Columbia* (1967, 387 F. 2d 233, 128 U.S. App. D.C. 275).

Chapter 2.—ABORTION

§ 22–201. Definition and penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–502.

NOTES TO DECISIONS

Congressional police power

Congress has the police power to outlaw abortions that are not performed under a qualified licensed practitioner of medicine. *United States* v. *M. Vuitch and S. A. Boyd* (1969, 305 F. Supp. 1032).

Constitutionality

Provisions in this section making the inducing of an abortion a felony unless it is done as necessary for preservation of mother's life or health, is invalid for failure to give that certainty which due process of law considers essential in criminal statute and for impinging to an appreciable extent on significant constitutional rights of individuals. *United States* v. *M. Vuitch and S. A. Boyd* (1969, 305 F. Supp. 1032).

Construction

In the case, the court held that neither this section nor the rules and regulations governing therapeutic abortions at general hospital of district precludes D.C. General Hospital from making available its facilities for performance of therapeutic abortions for mental health reasons whether or not patient has had previous history of mental defects. *M. Doe et al.* v. *General Hospital of the District of Columbia et al.* (1970, 313 F. Supp. 1170).

Equal protection of the laws

Principles of equal protection under our Constitution require that abortion policies in public hospitals be liberalized and it is legally proper that uniform medical abortion services be provided to all segments of the population, the poor as well as the rich. *United States* v. *M. Vuitch and S. A. Boyd* (1969, 305 F. Supp. 1032).

Severability of statute

The valid provision of this section outlawing abortions except when performed under the direction of competent physician is severable from invalid provision prohibiting abortion unless it is done as necessary for preservation of mother's life or health and entire statute is not invalid. *United States* v. *M. Vuitch and S. A. Boyd* (1969, 305 F. Supp. 1032).

Chapter 4.—ARSON

§ 22–401. Definition and penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–2401, 23–546.

NOTES TO DECISIONS

Defendant's absence during trial

Where record on appeal from convictions for housebreaking, arson, and malicious destruction of personal property failed to show that defendant's absence during trial, after trial had commenced in his presence, constituted deliberate failure to appear without reason that might bear on court's latitude to have continued trial, case would be remanded for development of such issue

including circumstances in which defendant was taken into custody after trial. *M. Cureton* v. *United States* (1968, 396 F. 2d 671, 130 U.S. App. D.C. 22).

§ 22–402. Burning one's own property with intent to defraud or injure another.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–2401, 23–546.

§ 22–403. Malicious burning, destruction, or injury of another's movable property.

NOTES TO DECISIONS

Arrest without warrant

Police officer may arrest without a warrant for misdemeanor of destroying private property only when that crime is committed, or attempt is made to commit it, in his presence or view. *S. Smith and W. Jeffries* v. *United States* (D.C. App. 1968, 247 A. 2d 293).

Officer had probable cause to arrest defendant who had been observed tearing up back seat of automobile which he admitted was not his on charge of destroying private property. *Id.*

Defendant's absence during trial

Where record on appeal from convictions for housebreaking, arson, and malicious destruction of personal property failed to show that defendant's absence during trial, after trial had commenced in his presence, constituted deliberate failure to appear without reason that might bear on court's latitude to have continued trial, case would be remanded for development of such issue including circumstances in which defendant was taken into custody after trial. *M. Cureton* v. *United States* (1968, 396 F. 2d 671, 130 U.S. App. D.C. 22).

Evidence—Sufficiency of

Evidence, including testimony identifying defendant as one of two men attempting to pry open window with crowbar, is sufficient to sustain convictions for attempted second-degree burglary, destroying property and attempted petit larceny. *H. Manning* v. *United States* (D.C. App. 1970, 270 A. 2d 504).

In this case, the court held that testimony as to ownership of damaged vending machine, purportedly based on witness' own knowledge, was not hearsay and was sufficient to prove ownership as alleged in information charging malicious injuring of property and attempted petit larceny. *L. Killens* v. *United States* (D.C. App. 1970, 263 A. 2d 44).

Possession by defendant of stolen television set, in alley at rear of store which was broken into and from which television set was taken, within a few minutes after the breaking of window and theft was sufficient evidence from which the trial court could infer breaking of the window, as predicate for conviction for destroying property. *F. Green* v. *United States* (D.C. App. 1969, 251 A. 2d 652).

Evidence that fingerprints of defendant appeared on glass surface, which had once been outside surface of drugstore entrance was insufficient to sustain conviction of attempted housebreaking, destroying property, and petit larceny. *A. W. Townsley* v. *United States* (D.C. App. 1967, 236 A. 2d 63).

Information—Amendment

Where amendment of information charging attempted second-degree burglary, destroying private property, and petit larceny to reflect that property in question belonged to corporation in care and custody of individual, as opposed to individual alone as charged in original information, conformed to testimony at trial and no prejudice was occasioned by the defense, permitting the amendment was not error. *J. L. King* v. *United States* (D.C. App. 1970, 271 A. 2d 556).

Sentences

Rule of lenity is to be applied, and concurrent sentences imposed for destruction of property and attempted second-degree burglary, since in this case both offenses involved single course of conduct, i.e., prying of window. *H. Manning* v. *United States* (D.C. App. 1970, 270 A. 2d 504).

Consecutive sentences could properly be imposed for attempted second-degree burglary and attempted petit larceny, since it is apparent from facts of case, including use of panel truck, that defendant intended to invade two distinct societal interests. *Id.*

Statutory provision for two-year mandatory minimum sentence for burglary do not operate to prevent prosecution and sentencing for lesser misdemeanors of attempted burglary in second degree, destroying private property, and petit larceny, for which offenses the defendant was actually sentenced for one-half year more than two-year felony minimum. *J. L. King* v. *United States* (D.C. App. 1970, 271 A. 2d 556).

Action of trial court, taken while appeal was pending, in purportedly granting motion to correct sentence by making one-year sentence for petit larceny and six-month sentence for destroying property run concurrently rather than consecutively was beyond the court's power at that time and order purporting to reduce sentence would be vacated without prejudice to reentry if subsequently deemed appropriate, *Id.*

In this case the court held that since the District of Columbia Code expressly limits maximum prison sentence for attempted burglary to one year and crimes of attempted second-degree burglary and malicious destruction of property are offenses against same societal interest and since there was nothing to show that offenses were animated by different criminal intents, defendant's convictions for attempted second-degree burglary and for malicious destruction of property with respective consecutive sentences of one year and six months are not appropriate case for cumulative punishment and case would be remanded for resentencing. *M. A. Johnson, Jr.* v. *United States* (D.C. App. 1970, 265 A. 2d 780).

Under the facts of this case where defendant's true crime was burglary in the second degree, a felony carrying a mandatory minimum sentence of two years, and prosecution reduced felony to the three separate misdemeanors of attempted burglary in second degree, destroying private property, and petit larceny, trial judge did not abuse discretion in imposing two consecutive one-year sentences and one concurrent one-year sentence following defendant's conviction on all three separate misdemeanors. *R. M. Weeks* v. *United States* (D.C. App. 1969, 252 A. 2d 907).

Chapter 5.—ASSAULT—MAYHEM—THREAT OF BODILY HARM

§ 22–501. Assault with intent to kill, rob, rape, or poison.

Every person convicted of any assault with intent to kill or to commit rape, or to commit robbery, or mingling poison with food, drink, or medicine with intent to kill, or wilfully poisoning any well, spring, or cistern of water, shall be sentenced to imprisonment for not less than two years or more than fifteen years. (Mar. 3, 1901, 31 Stat. 1321, ch. 854, § 803; Dec. 27, 1967, Pub. L. 90–226, § 601, title VI, 81 Stat. 736.)

AMENDMENT

1967—Section 601, Act Dec. 27, 1967, Pub. L. 90–226, amended section by inserting after "for not" the words "less than two years or".

SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967

Section 1101, Act Dec. 27, 1967, Pub. L. 90–226, provided:

Whoever, prior to the date of enactment of this Act [Pub. L. 90–226] commits any act or engages in any conduct which constitutes an offense under provision of law amended by this Act, [Amendments of sections, 4–140, 15–714, 15–716, 22–501, 22–703, 22–1513, 22–1801, 22–2001, 22–2901, 22–3105, 22–3201, 22–3202, 23–610, 23–901, 23–903, 24–301 and enactments of sections 4–140a, 4–150a and 22–1122, and amendments of 18 U.S.C. 4122, 5024 and 5025] shall be sentenced in accordance with the law in effect on the date he commits such acts or engages in such conduct.

SEPARABILITY OF PROVISIONS

Section 1102, Act Dec. 27, 1967, Pub. L. 90–226, provided:

If any provision of or any amendment made by this Act [Pub. L. 90–226; for provisions and amendments made by this Act, see enumeration in note above under heading, "Sentence for offenses committed prior to Dec. 27, 1967."] or the application thereof to any person or circumstance is held invalid, the other provisions of or other amendments made by this Act and the application of such provisions and amendments to other persons or circumstances shall not be affected thereby.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–502, 24–203.

NOTES TO DECISIONS

Admissibility of prior convictions

Permitting introduction of theft conviction and attempted larceny by trick conviction as to defendant who had been convicted on some 7 prior occasions and permitting introduction of evidence of narcotics conviction as to defendant who acknowledged some 17 earlier convictions was not error in prosecution in which both defendants elected not to testify. *C. W. Payne and H. Blue* v. *United States* (1968, 392 F. 2d 820, 129 U.S. App. D.C. 215).

Corroboration

In prosecution for assault with intent to commit rape, complainant's dress with torn shoulder strap offered enough independent corroboration of complainant's account to avoid requirement that verdict be directed for defendant. *United States* v. *M. J. Bryant* (1969, 420 F. 2d 1327, 137 U.S. App. D.C. 124).

Without corroboration of testimony of eleven-year-old prosecutrix as to defendant's alleged attempts to kiss prosecutrix, his exposure of himself and his attempts to remove her clothing, corpus delicti of assault with intent to commit carnal knowledge was not established. *A. Allison* v. *United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

Elements of assault

The essential elements of an assault with intent to commit rape, each of which government must prove beyond reasonable doubt, are: (1) that defendant made an assault upon complainant; (2) that he did so with specific intent to have intercourse with the complainant; and (3) that he intended to achieve penetration of complainant's sexual organ against her will and by using such force or threat of force as might be necessary to overcome resistance or make further resistance useless. *United States* v. *M. J. Bryant* (1969, 420 F. 2d 1327, 137 U.S. App. D.C. 124).

Absent an element of intended force, an assault with intent to have sexual intercourse is not an assault with intent to commit rape. *Id.*

The material elements of an assault with intent to commit rape are an assault, an intent to have carnal knowledge of a female, and a purpose to carry into effect this intent with force and against consent of the female unless intended victim is child under age of 16, in which case intent to use force need not be alleged or proved. *A. Allison* v. *United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

Evidence—Sufficiency

Evidence in this case, including evidence of defendant's in-trial identification and testimonial references to pretrial forerunners, sustained conviction for robbery and assault with dangerous weapon. *United States* v. *T. McNair* (1970, 433 F. 2d 1132 — U.S. App. D.C. —).

Testimony that defendant carried a gun while walking over to victim, that he fired at victim and hit her while she was in front of her residence, and that he left without rendering any aid justified denial of motions for acquittal on charge of assault with intent to kill made at end of government's case and after all of the evidence; and this testimony together with testimony that defendant stated almost simultaneously with firing of the gun that he would kill victim was sufficient for jury to find beyond reasonable doubt that defendant was guilty of assault with intent to kill. *United States* v. *W. Bridges* (1970, 432 F. 2d 692. — U.S. App. D.C. —).

In this case the court held that the identification testimony of victim and chief prosecution witness was sufficient to sustain conviction of assault with intent to kill and convictions of assault with a deadly weapon. *R. M. Allen and W. D. Caldwell* v. *United States* (1969, 420 F. 2d 223, 136 U.S. App. D.C. 381).

Testimony of complainant, in combination with other evidence, was sufficient to warrant submission of assault with intent to commit rape case to jury. *United States* v. *M. J. Bryant* (1969, 420 F. 2d 1327, 137 U.S. App. D.C. 124).

In a prosecution for assault with intent to commit carnal knowledge, the evidence sufficiently corroborated complainant's testimony that such offense had been committed. *United States* v. *T. Terry* (1970, 422 F. 2d 704, 137 U.S. App. D.C. 267).

In a prosecution for assault with intent to commit carnal knowledge, the evidence sufficiently corroborated identification testimony of complainant. *Id.*

In this case, the evidence was sufficient to support juvenile court's finding that juvenile participated as an aider and abettor in assault with intent to commit robbery on a school teacher. *In the matter of Reeder* (D.C. App. 1970, 264 A. 2d 893).

Former jeopardy protection

A jury which was specifically prohibited from considering a charge of taking indecent liberties with minor child if defendant were to be found guilty of assault with intent to commit carnal knowledge, and defendant was found guilty of the latter charge, its verdict of not guilty of the former charge was a nullity and did not clothe defendant with former jeopardy protection or preclude reviewing court from directing entry of judgment of guilty on indecent liberties charge upon finding that evidence was insufficient to sustain conviction for assault with intent to commit carnal knowledge. *A. Allison* v. *United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

Identification

In a prosecution under this section for assault with intent to commit carnal knowledge, trial court did not err in ruling that two impermissible identifications of defendant by complainant did not preclude complainant from making independent in-court identification based upon her observation of attacker at time of assault, since complainant was in close proximity to attacker for about 15 minutes on public street in broad daylight and in well-lighted room and since complainant gave police consistent description of attacker and had not wavered in her identification at any stage of proceeding. *United States* v. *T. Terry* (1970, 422 F. 2d 704, 137 U.S. App. D.C. 267).

Instructions

In prosecution for assault with intent to commit rape, where independent corroboration evidence was minimal rather than strong, plain error in failing to instruct jury on its responsibility to determine whether there was corroborative evidence, which it credited, of all elements of the offense was prejudicial, and required reversal. *United States* v. *M. J. Bryant* (1969, 420 F. 2d 1327, 137 U.S. App. D.C. 124).

Where conviction for assault with intent to commit rape must be reversed for failure to instruct on need for corroboration of testimony of victim on elements of offense, trial court correctly instructed jury on elements of assault, and evidence was sufficient to sustain conviction for assault, it was in interest of justice to avoid automatic requirement of new trial because of erroneous charge, and case would be remanded to district court with instructions either to grant new trial, or if prosecutor consented and court considered it in interest of justice, to enter judgment of assault. *Id.*

The phrase "specific intent to have sexual intercourse" in instruction on essential elements of assault with intent to commit rape was sufficiently meaningful to jury to avoid condemnation as plain error; the term without the word "specific" was clear enough, and addition of "specific" connoted a requirement of definiteness of intention which was the essence of the matter. *Id.*

Defendant was convicted of an assault on a female under age of 16 with intent to commit carnal knowledge and with taking immoral, improper and indecent liberties with a female under age of 16, in violation of Miller

Act, and the court should have given requested instruction that jury should consider count based on Miller Act only if they acquitted on the other count and, although failure to so instruct did not impair verdict under Miller Act, conviction for other offense must be set aside. *H. C. Dozier* v. *United States* (1967, 382 F. 2d 482, 127 U.S. App. D.C. 206).

Failure of court to instruct on simple assault as less offense under count charging taking immoral, improper, and indecent liberties with female under age of 16 furnished no basis for reversal, as jury was instructed on simple assault as less offense under count charging assault on female under age of 16 with intent to commit carnal knowledge. *Id.*

Intent

There is no intent to commit rape on the part of a defendant who intends to use the kind of "force" that is enough in his mind to test existence or persistence of complainant's true intentions, but not enough to achieve sexual intercourse if she "really" rejects him. There is no intent to commit rape. *United States* v. *M. J. Bryant* (1969, 420 F. 2d 1327, 137 U.S. App. D.C. 124).

A defendant who handles a lady vigorously and with some force (against her will) is guilty of an indecent assault; but he does not have an intent to commit rape if his actions are taken in hope or expectation of thereby awakening desire, and with further intention of desisting if his approach does not arouse desire or lead to acquiescence, but rather encounters continued resistance. *Id.*

Where a defendant is charged with assault with intent to commit rape, intent may be inferred from his conduct. *H. E. Higgins* v. *United States* (1968, 401 F. 2d 396, 130 U.S. App. D.C. 331).

Judge's comments

Since defendant referred to the merits, on allocution, as a reason for clemency, judge's comment that prosecution witness testified he had seen defendant at scene of assault and comment, after defendant related that he had presented three witnesses, and that judge had a feeling some witnesses had been threatened, were at most a reference to the judge's view of credibility as an explanation of refusal to accord clemency and did not establish that the judge was referring to possibility of threats as additional offense heightening sentence. *R. M. Allen and W. D. Caldwell* v. *United States* (1969, 420 F. 2d 223, 136 U.S. App. D.C. 381).

Jury trial—waiver

In this case the court held that, on the record of appeal from conviction for assault with intent to kill and assault with dangerous weapon, the waiver of a jury trial was not shown to be involuntary. However, the passive nature of role played by trial court in inquiry as to defendant's understanding was subject to criticism on appeal. *United States* v. *S. L. Straite* (1970, 425 F. 2d 594, — U.S. App. D.C. —).

Lesser included offense

The crime of assault is a lesser included offense under assault with intent to commit rape. *United States* v. *M. J. Bryant* (1969, 420 F. 2d 1327, 137 U.S. App. D.C. 124).

The crime of taking indecent liberties is a lesser included offense of assault with intent to commit carnal knowledge. *A. Allison* v. *United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

Motion for judgment of acquittal

To withstand a motion for judgment of acquittal of charge of assault with intent to have carnal knowledge, evidence need not exclude every reasonable hypothesis other than intent to have intercourse. *A. Allison* v. *United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

Review

Issues as to whether trial court erred in permitting prosecutor to impeach defendant with cross-examination respecting prior conviction of assault and in permitting prosecutor to impeach defense witness with cross-examination respecting her chastity would not be noticed for the first time on appeal from conviction for assault with intent to commit robbery. *C. E. Green* v. *United States* (1968, 397 F. 2d 643, 130 U.S. App. D.C. 82).

Reviewing court's authority

Where evidence does not sustain conviction of assault with intent to commit carnal knowledge but was sufficient to establish all elements of taking indecent liberties with minor child, reviewing court in remanding with directions to enter judgment of guilty of taking indecent liberties would accord permission to trial judge to grant new trial if he should deem it to be in the best interest of justice. *A. Allison* v. *United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

Sentence

Facts of this case, in which defendant convicted of assault with intent to kill and two counts of assault with dangerous weapon received general sentence of 5 to 15 years, which was maximum permitted for assault with intent to kill, but more than maximum limits in respect to other two counts of indictment, presented especially appealing case for careful and precise sentencing, and, though conviction is affirmed, sentence will be vacated and case remanded for resentencing. *United States v. S. L. Straite* (1970, 425 F.2d 594, —U.S. App. D.C.—).

§ 22–502. Assault with intent to commit mayhem or with dangerous weapon.

NOTES TO DECISIONS

Abuse of discretion

The decision of the trial court, rendered after hearing on admissibility, that 1959 conviction of one defendant for housebreaking and larceny and 1962 conviction of another defendant for attempted housebreaking could be brought out on cross-examination in robbery prosecution unless either defendant could satisfy court that since conviction he had led legally blameless life, was not an abuse of discretion. *United States* v. *J. L. Bailey et ano.* (1970, 426 F. 2d 1236, — U.S. App. D.C. —).

In a case where a juvenile had killed his father, and several witnesses had testified to juvenile's fear of his father, exclusion of testimony of juvenile's probation officer, that the juvenile had come to the officer several days before the shooting in order to seek his advice concerning the violent outbreaks of the father and that the officer had told the juvenile to contact police whenever such outbreaks occurred, was not an abuse of discretion and was not prejudicial since proffered evidence was cumulative and more remote than the evidence already admitted which dealt with juvenile's state of mind on the day in question. *In the Matter of M. Bumphus, Jr.* (D.C. App. 1969, 254 A. 2d 400).

Trial court did not abuse its discretion when it concluded that alleged molesting of defendant's son one month prior to charged assault was too attenuated to warrant reception in evidence, in prosecution for assault with a dangerous weapon. *T. M. Harley* v. *United States* (1967, 377 F. 2d 172, 126 U.S. App. D.C. 287).

Bifurcated trial

Refusal of trial court to grant bifurcated trial, sought on ground that defendant would defend on ground of want of criminal responsibility, was not reversible error where defense assured trial court that there was no defense on merits, and evidence to prove that defendant was one who robbed filling station was very strong. *United States* v. *R. A. Grimes* (1969, 421 F. 2d 1119, 137 U.S. App. D.C. 184).

Consecutive sentences

It is proper to increase punishment where there have been convictions under the conventional robbery statute and under statute prohibiting assaults with a dangerous weapon by imposing consecutive sentences. *United States* v. *J. L. Suggs and C. Blair* (1967, 269 F. Supp. 732).

Defendant, who allegedly committed crime of assault with a dangerous weapon in parking lot of store or near door to store, and who allegedly committed a robbery in office of store could be given consecutive sentences upon being convicted for both crimes. *Id.*

Double jeopardy

In this case the court held that the record established that defendant, whose counsel never thought of nor discussed with him the possibility of a plea of double jeopardy in connection with prosecution for assault after defendant had been sentenced for contempt for having

thrown ice-filled water pitcher at prosecuting attorney, did not deliberately abandon known right or privilege. *United States* v. *R. Rollerson* (1970, 308 F. Supp. 1014).

Fact that defendant had been sentenced for contempt for having thrown ice-filled bucket at prosecuting attorney did not preclude subsequent prosecution on counts charging assault with a deadly weapon and assault on Assistant United States Attorney engaged in performance of his duties. *Id.*

Defendant who during his trial for robbery threw water pitcher filled with ice at assistant United States attorney and who was sentenced to one year for contempt and who was thereafter convicted and sentenced for assault could not assert double jeopardy on his motion to vacate, set aside or correct assault sentence, where every fact necessary to formulation of double jeopardy claim was known prior to trial for criminal assault. *R. Rollerson* v. *United States* (1968, 405 F. 2d 1078, 132 U.S. App. D.C. 10; remanded 394 U.S. 575, 89 S. Ct. 1300, see also 308 F. Supp. 1014).

Evidence—Sufficiency

In this case there was adequate evidence to support convictions of assault and carrying a dangerous weapon. *United States* v. *L. White* (1970, 429 F. 2d 711, — U.S. App. D.C. —).

That the weapon allegedly used by defendant in holding up complaining witness was not recovered and put in evidence at trial did not raise a reasonable doubt as a matter of law as to defendant's guilt of assault with dangerous weapon. *United States* v. *J. Curtis* (1970, 427 F. 2d 630, — U.S. App. D.C. —).

From the visual evidence presented in this case, and particularly a demonstration in which the prosecutor assisted by standing on a courtroom table to simulate defendant's position on a ledge above assault victim, it was possible with great accuracy to determine projectory of bullet and hence to furnish a basis from which court and jury could conclude beyond a reasonable doubt that defendant fired bullet that hit victim, that defendant had a dangerous weapon in his possession at time victim was shot and that defendant fired shot from a pistol; thus, the court held that the evidence, though visual, was sufficient to sustain defendant's conviction of assault with a dangerous weapon. *H. Skinner* v. *United States* (1970, 425 F.2d 552, —U.S. App. D.C.—).

In this case the court held that the identification testimony of victim and chief prosecution witness was sufficient to sustain conviction of assault with intent to kill and convictions of assault with a deadly weapon. *R. M. Allen and W. D. Caldwell* v. *United States* (1969, 420 F. 2d 223, 136 U.S. App. D.C. 381).

In this case in light of the evidence on issue of whether offense was product of mental illness, conviction for robbery of property belonging to United States, assault with a dangerous weapon and carrying dangerous weapon would be affirmed. *T. H. Adams* v. *United States* (1969, 413 F. 2d 411, 134 U.S. App. D.C. 137).

Impeachment

Cross-examination of defendant during which the prosecution was permitted to develop that for some time prior to date of offense defendant had been absent from his military post without leave was improper, and the prejudice was magnified by the erroneous admission of government's rebuttal evidence as to defendant's absence from military post. *United States* v. *W. A. Shumate et ano* (1970, 429 F. 2d 777, — U.S. App. D.C. —).

Intent to commit other crime

There is no statutory requirement for either robbery or assault with a dangerous weapon, that there be a specific intent to commit the other. *United States* v. *J. L. Suggs and C. Blair* (1967, 269 F. Supp. 732).

Judge's comments

Since defendant referred to the merits, on allocution, as a reason for clemency, judge's comment that prosecution witness testified he had seen defendant at scene of assault and comment, after defendant related that he had presented three witnesses, and that judge had a feeling some witnesses had been threatened, were at most a reference to the judge's view of credibility as an explanation of refusal to accord clemency and did not establish that the judge was referring to possibility of threats as additional offense heightening sentence. *R. M. Allen and W. D. Caldwell* v. *United States* (1969, 420 F. 2d 223, 136 U.S. App. D.C. 381).

Jury trial—waiver

In this case the court held that, on the record of appeal from conviction for assault with intent to kill and assault with dangerous weapon, the waiver of a jury trial was not shown to be involuntary. However, the passive nature of role played by trial court in inquiry as to defendant's understanding was subject to criticism on appeal. *United States* v. *S. L. Straite* (1970, 425 F. 2d 594, — U.S. App. D.C. —).

One man showup

Where an intruder broke into the apartment of two women, and shortly thereafter was arrested as a suspect, and about 30 minutes after the attack the women were asked to come down to the street in front of their apartment and view defendant who was the sole occupant of patrol wagon, use of "one-man showup" did not deny defendant due process of law. *G. W. Bates* v. *United States* (1968, 405 F. 2d 1104, 132 U.S. App. D.C. 36).

Photographic identification

In a prosecution for robbery and assault with a dangerous weapon, where robbery victim on morning after robbery was shown 15 photographs depicting males of various ages, including one photograph of defendant that was not highlighted so as to prompt its selection and victim identified defendant's photograph, which was sixth photograph shown to him, as that of robber and remained firm in such identification after examining remaining photographs, such identification did not deny due process and did not vitiate subsequent in-court identification. *United States* v. *E. L. Hamilton* (1969, 420 F. 2d 1292, 137 U.S. App. D.C. 89).

Prejudicial error

In this case, assuming that failure of the trial judge to inform defendant's counsel of larceny charge before he summed up constituted error, where defendant was indicted for robbery and assault with a deadly weapon, however, that failure lacked the prejudice necessary to constitute reversible error where, inter alia, defendant's admission in open court established his intention and his attempt to trick complainants, so that damage was done when defendant took the stand and it was not likely that a variation in summation would have changed the verdict. *W. Walker, Jr.* v. *United States* (1969, 418 F. 2d 1116, 135 U.S. App. D.C. 280).

Question for Jury

In prosecution for robbery and assault with dangerous weapon, whether the defendant was one of holdup men in robbery of shoe store was question for jury. *United States* v. *J. E. York* (1969, 426 F. 2d 1191, —U.S. App. D.C.—).

Release on personal recognizance

Appellant, who was convicted of robbery and assault with a deadly weapon, and whose appeal presented a substantial claim that he was wrongfully identified, was ordered released on personal recognizance on certain enumerated conditions which were so structured as to allow for a maximum amount of supervision over appellant while still allowing for his freedom from incarceration. *W. Banks* v. *United States* (1969, 414 F. 2d 1150, 134 U.S. App. D.C. 254).

Remand

Since counsel for defendant, convicted of robbery and assault with a dangerous weapon, was not appointed until almost one year after offense, counsel was appointed slightly more than one month before trial, although counsel's failure to appear on date case was first set was allegedly due to misunderstanding case was not removed from ready calendar, and it was alleged that counsel had inadequate time in which to obtain specified physical evidence and interview specified witnesses, reviewing court remanded case to trial court for determination whether new trial should be granted on ground of ineffective assistance of counsel. *United States* v. *W. D. Weaver* (1970, 422 F. 2d 711, 137 U.S. App. D.C. 274).

Sentence

Facts of this case, in which defendant convicted of assault with intent to kill and two counts of assault with dangerous weapon received general sentence of 5 to 15 years, which was maximum permitted for assault with intent to kill, but more than maximum limits in respect to other two counts of indictment, presented especially appealing case for careful and precise sentencing, and, though conviction is affirmed, sentence will be vacated and case remanded for resentencing. *United States v. S. L. Straite* (1970, 425 F. 2d 594, — U.S. App. D.C. —).

Sufficiency of record on appeal

Record showed a preponderance of competent evidence to sustain conviction of juvenile of manslaughter and assault with a deadly weapon, and decision of juvenile court that juvenile was within its jurisdiction and should be committed to custody of Department of Public Welfare for indeterminate period was proper. *In the Matter of M. Bumphus, Jr.* (D.C. App. 1969, 254 A. 2d 400).

§ 22–504. Assault or threatened assault in a menacing manner.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–581.

NOTES TO DECISIONS

Appeal and error

Court of Appeals, on appeal from conviction for disorderly conduct and simple assault, was reluctant to determine whether police department form containing information as to time, place and date of offense, name of complainant, names and addresses of witnesses, and description of details of offense was produceable under Jencks Act but would give trial court opportunity in first instance to decide issue of produceability under established guidelines. *C. Duncan, Jr.* v. *United States and District of Columbia* (1967, 379 F. 2d 148, 126 U.S. App. D.C. 371).

If trial court, in determining issue of produceability of police report form under Jencks Act, found that statement should have been made available, error in failing to require production of statement would not be harmless and would require new trial on charges of disorderly conduct and simple assault. *Id.*

Applicability of Jencks rule

Jencks rule of evidence applies in District of Columbia Court of General Sessions whether case is prosecuted by District of Columbia or by United States. *C. Duncan, Jr.* v. *United States and District of Columbia* (1967, 379 F. 2d 148, 126 U.S. App. D.C. 371).

Assistance of counsel

The record did not sustain the claim of ineffective assistance of counsel who was a defense attorney with many years of experience and who presented all substantial defenses, made appropriate motions and objections, attempted to suppress the evidence on the charge of unlawful possession of a pistol after conviction of a felony, and was able to obtain acquittal on a charge of threats to do bodily harm and directed verdict in defendant's favor on a charge of assault by threatening in a menacing manner. *I. Gressette* v. *United States* (D.C. App. 1969, 256 A. 2d 418).

In this case the record did not show that defendant's trial counsel who declined to cross-examine either complainant or arresting officer ineffectively assisted defendant who himself testified and denied assault. *J. J. Scott* v. *United States* (D.C. App. 1969, 259 A. 2d 353).

Cause for arrest

Where a police officer had a conversation with the victim of an assault and petit larceny and proceeded in patrol car in search of the assailants, and the stolen articles were in plain view of officer in defendant's hand and at his feet in the gutter, an arrest was authorized when the officer saw the stolen articles. *R. L. Thompkins* v. *United States* (D.C. App. 1969, 251 A. 2d 636).

Where in making an initial stop of the defendant, the officer was engaged in routine on-the-street investigation in nearby area of a crime minutes after it occurred in an early hour of the morning in his effort to find perpetrator while the trail was still warm, and under these circumstances the initial stop of defendant was neither an arrest nor an arbitrary detention, but arrest occurred after officer saw the articles which fit description of stolen property, which gave sufficient cause to arrest, and seizure was not invalid. *Id.*

Collateral attack on judgment

Bringing of motion for trial court to exercise its inherent power to vacate a sentence and to resentence defendant, thereby restoring him to status of one upon whom sentence has just been passed and who is allowed ten days thereafter in which to note his appeals is the correct procedure for the initiation of a collateral attack upon a judgment or sentence. *G. A. Hines* v. *United States* (D.C. App. 1968, 237 A. 2d 827).

Consecutive sentences for two separate offenses

The distinctions that assault and petit larceny are separate and distinct offenses requiring different elements of proof, and that one is a crime of general intent against the person, and the other a crime of specific intent against property, are no longer conclusive in determining the legality of consecutive sentences for two crimes committed in a single course of conduct. *G. Mahoney* v. *United States* (D.C. App. 1968, 243 A. 2d 684).

The compelling reasons which call for the application of the rule of lenity are absent in this case, and there is no substantial doubt Congress would have intended, in the discretion of the court, that consecutive punishment be imposed for historically separate offenses, against different societal interests, for which it has provided separate deterrents. *Id.*

Continuance

The granting or refusal of a continuance is largely left to discretion of the trial judge, and his decision will not be disturbed without a clear showing of abuse in the exercise of that discretion. *W. E. Smith* v. *United States* (D.C. App. 1967, 235 A. 2d 574).

Defense of property

In a prosecution for assault on neighbor who went upon defendant's parking lot to retrieve a pet cat which had escaped from the neighbor's house and had hidden in an air shaft in defendant's building, a charge that, if defendant acted in honest belief under the circumstances that there would be injury to his property by virtue of what took place and he used no more force than was necessary to prevent injury to his property, then he would have right to do what he did was erroneous but was beneficial to complaining defendant. *R. R. Shehyn* v. *United States* (D.C. App. 1969, 256 A. 2d 404).

Delay in prosecution

In this case the lapse of time which could be attributed to the government did not justify dismissal of assault informations, though defendant did take the stand to testify that he could not remember the circumstances of his arrest, since his lack of memory was not due to the passage of time but to the fact that he had been drinking prior to the alleged assault, and any delay charged the government could thus have no prejudicial effect on defendant's defense, and there were no other circumstances to support a finding of the trial court of vexatious, oppressive, chicanerous or harassing conduct on the government's part. *United States* v. *E. L. Jefferson* (D.C. App. 1969, 257 A. 2d 225).

Double jeopardy

Judgments were required to be vacated and nolle prosequis entered in cases which had been pending before Court of General Sessions where government's action in entering the nolle prosequis could not be characterized as an abuse of its power, and to allow government to file new informations at a subsequent date would not violate double jeopardy clause of Fifth Amendment. *United States* v. *B. H. Foster* (D.C. App. 1967, 226 A. 2d 164).

Effective assistance of counsel

The court held that, record on appeal from a conviction for petit larceny and assault did not establish denial of effective assistance of counsel. *J. Bell, Jr.,* v. *United States* (D.C. App. 1970, 260 A. 2d 690).

Evidence of assault

Evidence that heavy bag of coins was taken from victim's hand supported a finding of an interference with person of another sufficient to constitute an assault. *G. Mahoney* v. *United States* (D.C. App. 1968, 243 A. 2d 684).

Evidence—Sufficiency

Evidence sustained conviction of assault, public intoxication and disorderly conduct in violation of District of Columbia Code. *W. M. Dempsey* v. *United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

Identification

Question of identification was one of fact for jury in prosecution for assault and for carrying a deadly weapon. *J. J. Durham* v. *United States* (D.C. App. 1968, 237 A. 2d 830).

Inconsistent verdict

In this case, the court held that since there was evidence that defendant not only struck officer with nightstick but also hit him and engaged in general scuffling, finding by jury that defendant was not guilty of charge involving possession of nightstick did not preclude conviction on charge of simple assault. *C. T. Matthews* v. *United States* (D.C. App. 1970, 267 A. 2d 826).

Ineffective assistance of counsel

Fact that new counsel was appointed not more than 60 minutes before trial did not amount to ineffective assistance of counsel of defendant charged with simple assault, unlawful entry and petit larceny where no continuance was requested and defendant announced he was ready for trial, factual situation was not so complex as to necessitate any extensive investigation and there were no witnesses for the defense who could have been called, new counsel was experienced and diligent and made no claim that he was hampered by appointment shortly before trial. *S. A. Tuttle* v. *United States* (D.C. App. 1968, 238 A. 2d 590).

Issue of fact

Whether a defendant, who was charged with assault, public intoxication and disorderly conduct in violation of District of Columbia Code, had mental disease which should have excused him from criminal responsibility was issue of ultimate fact for the trier thereof. *W. M. Dempsey* v. *United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

Probation report

Where record clearly showed that court had inquired into defendant's record prior to imposing sentence following conviction for assault and learned that defendant had committed offense while on probation from previous conviction, trial court, which felt that it had all information that was needed for sentencing, did not abuse discretion in failing to order either a preliminary screening or probation report prior to imposing sentence. *W. A. Thomas, W. B. Preston and E. C. Singleton* v. *United States* (D.C. App. 1967, 229 A. 2d 155).

Timely notice of appeal

Failure to file timely notice of appeal deprived the District of Columbia Court of Appeals of jurisdiction over a direct appeal. *G. A. Hines* v. *United States* (D.C. App. 1968, 237 A. 2d 827).

Weight of evidence

Weight to be given testimony of witnesses who related that the conduct of the defendant at time of alleged assault, public intoxication and disorderly conduct, in violation of District of Columbia Code, and shortly thereafter was bizarre and the weight to be given testimony of government witness who related that the defendant was intoxicated at the time of the alleged offenses and that assault was triggered by refusal to serve him beer was for the trier of fact. *W. M. Dempsey* v. *United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

§ 22–505. Assault on member of police force.

(a) Whoever without justifiable and excusable cause, assaults, resists, opposes, impedes, intimidates, or interferes with any officer or member of any police force operating in the District of Columbia, or any officer or employee of any penal or correctional institution of the District of Columbia, or any officer or employee of the government of the District of Columbia charged with the supervision of juveniles being confined pursuant to law in any facility of the District of Columbia, whether such institution or facility is located within the District of Columbia or elsewhere, while engaged in or on account of the performance of his official duties, shall be fined not more than $5,000 or imprisoned not more than five years or both. It is neither justifiable nor excusable cause for a person to use force to resist an arrest when such arrest is made by an individual he has reason to believe is a law enforcement officer, whether or not such arrest is lawful.

(b) Whoever in the commission of any such acts uses a deadly or dangerous weapon shall be imprisoned not more than ten years. (R.S., D.C., § 432; June 29, 1953, 67 Stat. 95, ch. 159, § 205; Oct. 20, 1965, 79 Stat. 1011, Pub. L. 89–277, § 1; July 29, 1970, Pub. L. 91–358, § 206, title II, 84 Stat. 601.)

AMENDMENT

1970—Section 206 of Act July 29, 1970, Public Law 91–358 amended subsection (a) by adding the following sentence at the end thereof: "It is neither justifiable nor excusable cause for a person to use force to resist an arrest when such arrest is made by an individual he has reason to believe is a law enforcement officer, whether or not such arrest is lawful."

EFFECTIVE DATE OF AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–524, 24–203.

NOTES TO DECISIONS

Double jeopardy

There was no double jeopardy when a defendant, after having been convicted of disorderly conduct, was prosecuted for assaulting a police officer, notwithstanding fact that both incidents occurred in relatively short span of time and at same place. *H. Harris* v. *United States* (1968, 402 F. 2d 205, 131 U.S. App. D.C. 64).

Escape as justified by improper conviction

Attempt to escape and assault on a prison guard was indefensible, and arguments that appellant was not guilty of attempted escape or assault on correctional officer because he had been improperly convicted of attempted burglarly and wrongfully confined at workhouse instead of youth correction center were without merit. *United States* v. *J. H. Haley* (1969, 417 F. 2d 625).

Evidence—Admissibility of

Refusal to admit into evidence a docket entry indicating that victim of shooting had been convicted of assault on a police officer was not improper on basis that the entry had relevance as showing victim's propensity for violence and aggressive behavior thus bolstering defendant's claim of self-defense, where the docket entry disclosed only that victim had been convicted under this section making criminal nonviolent obstruction of police officer in performance of his duty as well as assault and physical interference; and the proffer was inadequate to apprise the court of the relevance of the evidence. *A. Jones* v. *United States of America* (1967, 385 F. 2d 296, 128 U.S. App. D.C. 36).

Impeachment

In the case, the court held that a prior conviction of attempted housebreaking was properly used for impeachment of defendant charged with unauthorized use of vehicle and assault on police officer. *United States* v. *C. E. White* (1970, 427 F. 2d 634, —U.S. App. D.C.—).

Jurisdiction

United States District Court for Eastern District of Virginia had jurisdiction of an assault charge resulting

from assault upon a correctional officer at District of Columbia Workhouse at Occoquan, Virginia. *United States* v. *J. H. Haley* (1969, 417 F. 2d 625).

Sentence

In this case, the court held that the fact that had defendant, convicted before United States District Court for Eastern District of Virginia of assaulting a guard at District of Columbia Reformatory at Lorton, Virginia, been sentenced under District of Columbia law rather than under general federal law he might have received benefit of more liberal treatment after sentencing did not constitute denial of equal protection or due process since there is no essential difference between sentencing alternatives. *United States* v. *T. Horton* (1970, 423 F. 2d 474.)

§ 22–507. Threats to do bodily harm.

NOTES TO DECISIONS

Assistance of counsel

The record did not sustain the claim of ineffective assistance of counsel who was a defense attorney with many years of experience and who presented all substantial defenses, made appropriate motions and objections, attempted to suppress the evidence on the charge of unlawful possession of a pistol after conviction of a felony, and was able to obtain acquittal on a charge of threats to do bodily harm and directed verdict in defendant's favor on a charge of assault by threatening in a menacing manner. *I. Gressette* v. *United States* (D.C. App. 1969, 256 A. 2d 418).

Collateral attack on judgment

Bringing of motion for trial court to exercise its inherent power to vacate a sentence and to resentence defendant, thereby restoring him to status of one upon whom sentence has just been passed and who is allowed ten days thereafter in which to note his appeals is the correct procedure for the initiation of a collateral attack upon a judgment or sentence. *G. A. Hines* v. *United States* (D.C. App. 1968, 237 A. 2d 827).

Evidence—admissibility

The trial court properly refused to allow defendant to testify to events occurring after date of the offense, since defendant made no proffer of excluded testimony other than that he wished "to cast disparity on the elements of the offense," and testimony concerning wife's conduct at a later time would not shed light on whether or not offense was committed and testimony concerning defendant's conduct after offense would have been merely self-serving. *P. F. Wilson* v. *United States* (D.C. App. 1970, 261 A. 2d 513).

Timely notice of appeal

Failure to file timely notice of appeal deprived the District of Columbia Court of Appeals of jurisdiction over a direct appeal. *G. A. Hines* v. *United States* (D.C. App. 1968, 237 A. 2d 827).

Chapter 7.—BRIBERY—OBSTRUCTING JUSTICE

§ 22–702. Offering or receiving money, property, or valuable consideration to procure office or promotion from District of Columbia Commissioners.

Every person who directly or indirectly takes, receives, or agrees to receive any money, property, or other valuable consideration whatever from any person for giving, procuring, or aiding to give or procure any office, place, or promotion in office from the Commissioners of the District of Columbia, or from any officer under them, and every person who, directly or indirectly, offers to give, or gives any money, property, or other valuable consideration whatever for the procuring or aiding to procure any such office, place, or promotion in office shall be deemed guilty of a misdemeanor, and on conviction thereof in the Superior Court of the District of Columbia shall be punished by a fine not exceeding one thousand dollars or imprisonment in the jail for not more than twelve months, or both, in the discretion of the court. (July 1, 1902, 32 Stat. 591, ch. 1352; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–546.

NOTES TO DECISIONS

Construction

Since under reorganization of government of District of Columbia, a single commissioner was assigned executive functions while council was assigned quasi-legislative functions and, under former law, both functions had been exercised by three-member board of commissioners, 1 U.S.C. 1 providing that, in determining meaning of act, words imparting plural include singular is not applicable to permit prosecution under section 22–702 prohibiting receiving money for procuring any office or promotion from the commissioners of District of Columbia. *United States* v. *T. W. Bishton* (D.C. App. 1970, 264 A. 2d 139).

Since there was not a single commissioner of District of Columbia as provided by government reorganization when section 22–702 was drafted prohibiting receiving money for procuring any office or promotion from commissioners of District of Columbia, defendant cannot be prosecuted under section 22–702 which had not been amended to conform to change to single commissioner by the reorganization. *Id.*

§ 22–703. Obstructing justice.

(a) Whoever corruptly, by threats or force, endeavors to influence, intimidate, or impede any juror, witness, or officer in any court in the District in the discharge of his duties, or, by threats or force, in any other way obstructs or impedes or endeavors to obstruct or impede the due administration of justice therein, or whoever willfully endeavors by means of bribery, misrepresentation, intimidation, or force or threats of force, to obstruct, delay, or prevent the communication to an investigator of the District of Columbia government by any person of information relating to a violation of any criminal statute in effect in the District of Columbia, or injures any person or his property on account of the giving by such person or by any other person of such information to any such investigator in the course of the conduct of any criminal investigation, shall be fined not more than $1,000 or be imprisoned not more than three years, or both.

(b) As used in this section, the term "criminal investigation" means an investigation relating to a violation of any criminal statute in effect in the District of Columbia, and the term "investigator" means an individual duly authorized by the Commissioner or his designated agent to conduct or engage in such an investigation. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 862; Dec. 27, 1967, Pub. L. 90–226, § 401, title IV, 81 Stat. 736.)

AMENDMENT

1967—Section 401, Act Dec. 27, 1967, Pub. L. 90–226, amended section to read as above set out. For provisions of section prior to this amendment, see main edition of the code.

SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967

Section 1101, Act Dec. 27, 1967, Pub. L. 90–226, provided: Whoever, prior to the date of enactment of this Act, [Pub. L. 90–226] commits any act or engages in any conduct which constitutes an offense under provision of law amended by this Act, [Amendments of sections, 4–140, 15–714, 15–716, 22–501, 22–703, 22–1513, 22–1801, 22–2001, 22–2901, 22–3105, 22–3201, 22–3202, 23–610, 23–901, 23–903, 24–301 and enactments of sections 4–140a, 4–150a and 22–1122, and amendments of 18 U.S.C. 4122, 5024 and 5025] shall be sentenced in accordance with the law in effect on the date he commits such acts or engages in such conduct.

SEPARABILITY OF PROVISIONS

Section 1102, Act Dec. 27, 1967, Pub. L. 90–226, provided: If any provision of or any amendment made by this Act [Pub. L. 90–226; for provisions and amendments made by this Act, see enumeration in note above under heading, "Sentence for offenses committed prior to Dec. 27, 1967."] or the application thereof to any person or circumstance is held invalid, the other provisions of or other amendments made by this Act and the application of such provisions and amendments to other persons or circumstances shall not be affected thereby.

§ 22–704. Corrupt influence—Officials.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–546.

NOTES TO DECISIONS

Evidence—Sufficiency

Evidence was sufficient to show a mutual knowledge of a common criminal enterprise. *L. Wallace et al.* v. *United States* (1969, 412 F. 2d 1097, 134 U.S. App. D.C. 50).

Recorded evidence—admissibility

Defendant who was charged with conspiracy to violate bribery statute was not in a position to challenge manner in which recordings, which contained admissions by codefendants through use of informer, were obtained. *L. Wallace et al.* v. *United States* (1969, 412 F. 2d 1097, 134 U.S. App. D.C. 50).

Chapter 8.—CRUELTY TO ANIMALS

§ 22–801. Definition and penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–802, 22–806, 22–807, 22–809, 22–811 to 22–813.

NOTES TO DECISIONS

Evidence—Sufficiency

In this case the court held the evidence was insufficient to sustain conviction for failing to provide full grown German shepherd dog, which was tied by three-foot chain on open concrete back porch of defendant's home during tempatures ranging from 23 degrees to 27 degrees Fahrenheit, with proper shelter or protection from weather, in absence of testimony by someone experienced in care of dog of this type, not necessarily a veterinarian, that shelter or protection from weather supplied this dog on this occasion would tend to cause dog to suffer. *A. F. Jordan, Jr.* v. *United States* (D.C. App. 1970, 269 A. 2d 848).

Expert testimony

In a prosecution under this section for failing to provide dog with proper shelter or protection from weather, stipulation that the physician who observed the dog was a qualified physician did not have effect of qualifying the physician as expert on care and handling of dogs. *A. F. Jordan, Jr.* v. *United States* (D.C. App. 1970, 269 A. 2d 848).

Findings

A defendant can be convicted of unnecessarily failing to provide a dog with proper food, drink, shelter, or protection from weather without a finding that he inflicted unnecessary cruelty upon the dog. *A. F. Jordan, Jr.* v. *United States* (D.C. App. 1970, 269 A. 2d 848)

§§ 22–802, 22–803.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 22–806, 22–812, 22–813.

§ 22–804. Arrests without warrant authorized—Notice to owner.

CROSS REFERENCE

Arrests without warrant, generally, see § 23–581.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–806, 22–812, 22–813.

§ 22–805. Issuance of search warrants.

CROSS REFERENCE

Search warrants, generally, see §§ 23–521 to 23–525.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–806, 22–812, 22–813.

§ 22–806. Prosecution of offenders—Disposition of fines.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–812, 22–813.

§§ 22–807 to 22–809.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 22–806, 22–812, 22–813.

§ 22–811. Neglect of sick or disabled animals.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–806, 22–812, 22–813.

§§ 22–813, 22–814.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 22–806.

Chapter 9.—DOMESTIC RELATIONS

§§ 22–903 to 22–906. Repealed. July 29, 1970, Pub. L. 91–358, § 165(a)(b), title I, 84 Stat. 586.

Sections 22–903 to 22–905, being sections 1 to 3 of Act of Mar. 23, 1906, 34 Stat. 86 and 87, ch. 1131, dealt with punishment for willful failure to support wife or child, evidence required to prove marriage and parenthood and the payment by the superintendent of the workhouse of money to the wife earned by prisoner.

Section 22–906, being a part of the Act of May 18, 1910, 36 Stat. 403, ch. 248, dealt with deposit of moneys collected by the clerk of juvenile court, pursuant to sections 22–903 to 22–905.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

Chapter 11.—DISORDERLY CONDUCT

Sec.

22–1117. Flying fire balloons or parachutes forbidden.
22–1122. Rioting or inciting to riot—Penalties.

§ 22–1107. Unlawful assembly—Profane and indecent language.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–101.

NOTES TO DECISIONS

Advisory opinions on appeal

Where Court of General Sessions of the District of Columbia granted motion to dismiss disorderly conduct charge on several grounds but subsequently vacated dismissal with respect to jurisdictional ground only and question of prosecutorial authority was certified to Court of Appeals, any action Court of Appeals might take on certified question could not alter dismissal of charges and hence certificate was dismissed. *District of Columbia* v. *M. S. Barry et al.* (1967, 387 F. 2d 860, 128 U.S. App. D.C. 295).

Appeal and error

Court of Appeals, on appeal from conviction for disorderly conduct and simple assault, was reluctant to determine whether police department form containing information as to time, place and date of offense, name of complainant, names and addresses of witnesses, and description of details of offense was produceable under Jencks Act but would give trial court opportunity in first instance to decide issue of produceability under established guidelines. *C. Duncan, Jr.* v. *United States and District of Columbia* (1967, 379 F. 2d 148, 126 U.S. App. D.C. 371).

If trial court, in determining issue of produceability of police report form under Jencks Act, found that statement should have been made available, error in failing to require production of statement would not be harmless and would require new trial on charges of disorderly conduct and simple assault. *Id.*

Applicability of Jencks rule

Jencks rule of evidence applies in District of Columbia Court of General Sessions whether case is prosecuted by District of Columbia or by United States. *C. Duncan, Jr.* v. *United States and District of Columbia* (1967, 379 F. 2d 148, 126 U.S. App. D.C. 371).

Arrest, validity of

Arrest of defendant for use toward officer of abusive, insulting, obscene language in protest against direction that he and a group of others on sidewalk move on was valid. *G. A. Williams* v. *District of Columbia* (D.C. App. 1967, 227 A. 2d 60; rev'd, remanded and dismissed 419 F. 2d 638, 136 U.S. App. D.C. 56).

Congregating and assembling

Defendant could not have been convicted of engaging in loud and boisterous talking and other disorderly conduct since requisite element of congregating and assembling was neither charged nor proved. *W. R. Franklin* v. *District of Columbia* (D.C. App. 1968, 248 A. 2d 677).

Defendant could not have been convicted of fighting in street since proof was that incident occurred inside police station. *Id.*

The "Congregate and assemble" provision of this section requires presence of three or more persons acting in concert for an unlawful purpose. *A. Kinoy* v. *District of Columbia* (1968, 400 F. 2d 761, 130 U.S. App. D.C. 290).

Under this section making it illegal for person or persons to congregate and assemble and to engage in loud and boisterous talking or disorderly conduct, a "congregation" requires at least three persons. *Id.*

Under this section there can be no "unlawful assembly" where only two persons at the most are assembled. *Id.*

At common law the mere act of assembling was not unlawful, unless it was for an unlawful purpose. Neither is a peaceful assembly unlawful under this section. It does not condemn the mere act of assembling on the street, but prohibits assembling and congregating, coupled with the doing of the forbidden acts. In other words, at common law the assembly must be for an unlawful purpose, and when three or more persons so assembled the offense was complete without the commission of any additional overt criminal act; but here it requires both the assembly and the commission of one of the acts forbidden by the statute to constitute unlawful assembly. Both the assembling and the overt act are essential to make the offense. *G. S. Hunter et al.* v. *District of Columbia* (1918, 47 App. D.C. 406).

Construction

This section prohibiting use of profane or obscene language in public would be valid if interpreted to require that language be spoken in circumstances which threaten a breach of the peace. *G. A. Williams* v. *District of Columbia* (1969, 419 F. 2d 638, 136 U.S. App. D.C. 56; rev'g 227 A. 2d 60).

Corporation Counsel's authority to prosecute

Under statute restricting corporation counsel's authority to cases in which punishment is fine only or imprisonment not to exceed one year, corporation counsel lacked authority to initiate prosecution for disorderly conduct which was punishable by fine of not more than $250 or imprisonment of not more than 90 days, or both. *District of Columbia* v. *Mark Grimes* (1968, 404 F. 2d 1337, 131 U.S. App. D.C. 360).

Double jeopardy

There was no double jeopardy when a defendant, after having been convicted of disorderly conduct, was prosecuted for assaulting a police officer, notwithstanding fact that both incidents occurred in relatively short span of time and at same place. *H. Harris* v. *United States* (1968 402 F. 2d 205, 131 U.S. App. D.C. 64).

Element of offense

The opinion in a prior case suggested that it was not necessary to a conviction for disorderly conduct that the words used have tended to provoke a breach of the peace, but even assuming that such requirements existed, it was satisfied by showing that defendant had stated to police officers "You m____r f____s keep out of this" since words uttered were indecent, obscene and patently offensive "fighting words" whose very use not only inflicted injury but tended to provoke an immediate breach of peace. *W. R. Franklin* v. *District of Columbia* (D.C. App. 1968, 248 A. 2d 677).

Consequential or probable breach of the peace is not an element of offense under statute making it unlawful to curse, swear, or use profane language or indecent or obscene words in any public way. *G. A. Williams* v. *District of Columbia* (D.C. App. 1967, 227 A. 2d 60; rev'd, remanded and dismissed 419 F. 2d 638, 136 U.S. App. D.C. 56).

Dismissal of charge under general disorderly conduct statute removed need for finding that breach of the peace was threatened by offensive language of defendant, who was also charged with use of profane language or indecent or obscene words on public sidewalk. *Id.*

Evidence—Admissibility

Where evidence had been admitted that a telephone line identifier had been connected to defendant's telephone, testimony of a security officer of telephone company that the records of the company showed that the number from which harassing calls to complainant originated was private listing registered to the defendant was merely cumulative and its admission, if error, was harmless, on a charge of disorderly conduct consisting of making harassing telephone calls to the home of complainant. *J. Coleman* v. *District of Columbia* (D.C. App. 1969, 250 A. 2d 555).

Evidence—Sufficiency

Evidence sustained conviction of assault, public intoxication and disorderly conduct in violation of District of Columbia Code. *W. M. Dempsey* v. *United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

Evidence supported conviction of defendant for using profane language, indecent and obscene words, on public sidewalk. *G. A. Williams* v. *District of Columbia* (D.C. App. 1967, 227 A. 2d 60; rev'd, remanded and dismissed 419 F. 2d 638, 136 U.S. App. D.C. 56).

—— Suppression

In this case, the court held that the trial judge did not err in denying motion to suppress heroin properly seized from defendant, one judge being of the opinion that the defendant was properly "seized" in rapidly moving on-street investigation and discarding of narcotics was not product of illegal police action, and second judge being of the opinion that the officer had probable cause to

arrest defendant for disorderly conduct and seizure of heroin was therefore lawful. *W. Von Sleichter* v. *United States* (D.C. App. 1970, 267 A. 2d 336).

Information—Sufficiency of

In a case where the information charged a violation of a statute forbidding persons to congregate and assemble on public street and crowd, obstruct, or incommode the free use of the street failed to charge that the act was done under circumstances threatening a breach of peace, it did not charge an offense and conviction on it could not stand. *J. P. Adams* v. *United States* (D.C. App. 1969, 256 A. 2d 563).

An information charging defendants with congregating and assembling on a certain avenue, and then and there crowding, obstructing, and incommoding the free use of the sidewalk thereof, contrary to and in violation of this section, is insufficient, though drawn in the language of the statute, because it fails to set out the facts constituting the offense with sufficient clearness to apprise defendants of the charge they are to meet, or to inform the court of their sufficiency to sustain a conviction. *G. S. Hunter et al.* v. *District of Columbia* (1918, 47 App. D.C. 406).

Information charging defendant during peace demonstration with disorderly conduct in that she did with intent to provoke breach of peace congregate with others on public street and on grounds of United States Capitol, and did refuse to move, which failed to specify which of several potentially applicable statutes was basis of prosecution, was insufficient. *D. Feeley* v. *District of Columbia* (1967, 387 F. 2d 216, 128 U.S. App. D.C. 258).

Defendants, who were arrested after refusing to move out of corridor in House wing of Capitol building when ordered to do so by Capitol police, were entitled to know with certainty offense with which they were charged and possible penalty threatened and were entitled to definite reference to the law which they had allegedly violated, and thus where, notwithstanding request of defense, no one had given citation of statute under which prosecution was being had, other than statement of prosecutor that two sections were involved, convictions under section carrying lighter sentence, as requested by prosecutor, were required to be set aside. *D. Smith et al.* v. *District of Columbia* (1967, 387 F. 2d 233, 128 U.S. App. D.C. 275).

Issues of fact

The accuracy of telephone company's procedure in registering harassing telephone calls made to complainant's home was for the trial court, on a charge of disorderly conduct consisting of making harassing telephone calls. *J. Coleman* v. *District of Columbia* (D.C. App. 1969, 250 A. 2d 555).

Whether a defendant, who was charged with assault, public intoxication and disorderly conduct in violation of District of Columbia Code, had mental disease which should have excused him from criminal responsibility was issue of ultimate fact for the trier thereof. *W. M. Dempsey* v. *United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

Preservation of community moral standards

The prohibition of and, if required, prosecution for use of obscene and profane language in public may be upheld upon interest of state in preserving community moral standards. *G. A. Williams* v. *District of Columbia* (D.C. App. 1967, 227 A. 2d 60; rev'd, remanded and dismissed 419 F. 2d 638, — U.S. App. D.C. —).

Unlawful assembly, defined

An attorney representing a client who had been subpoenaed to appear before the House Un-American Activities Committee could not be convicted of a violation of this section for conduct which led to his forceful removal from committee room by order of subcommittee chairman acting alone in violation of committee rules, where attorney could not have been properly charged with assembling and congregating, an essential element of offense, and an attorney representing a client could not come within the definition of unlawful assembly. *A. Kinoy* v. *District of Columbia* (1968, 400 F. 2d 761, 130 U.S. App. D.C. 290).

Validity of information

The information in this case charging that defendant used profane language and indecent and obscene words was defective for failure to allege that such conduct threatened breach of peace. *G. A. Williams* v. *District of Columbia* (1969, 419 F. 2d 638, 136 U.S. App. D.C. 56, rev'g 227 A. 2d 60).

Weight of evidence

Weight to be given testimony of witnesses who related that the conduct of the defendant at time of alleged assault, public intoxication and disorderly conduct, in violation of District of Columbia Code, and shortly thereafter was bizarre and the weight to be given testimony of government witness who related that the defendant was intoxicated at the time of alleged offenses and that assault was triggered by refusal to serve him beer was for the trier of fact. *W. M. Dempsey* v. *United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

§ 22–1109. Throwing stones or other missiles forbidden.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–812.

§ 22–1112. Lewd, indecent, or obscene acts.

CROSS REFERENCE

For other provisions dealing with obscene matters see sec. 22–2001.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–109, 23–101.

NOTES TO DECISIONS

Abuse of court's discretion

Denial of defendant's motion to vacate a judgment of conviction on a plea of guilty on the ground that manifest injustice occurred because court appointed same counsel to represent both defendants was not an abuse of discretion under the record. *M. E. Lord Jr.* v. *District of Columbia* (D.C. App. 1967, 235 A. 2d 322.)

Admission by defendant

Admission by defendant that he was present in washroom when officer entered eliminated necessity for corroboration of presence of officer and defendant at the time and place of alleged lewd, obscene, and indecent act in the washroom, in case wherein there was testimony of only one witness to the act, namely, the officer. *L. D. Reed* v. *District of Columbia* (D.C. App. 1967, 226 A. 2d 581).

Assumption by reviewing court

In view of citation to court of general sessions of decision laying down rule that testimony of a single witness to verbal invitation to sodomy should be received and considered with great caution, in case wherein there was testimony of only one witness to the charged lewd, obscene, and indecent act, reviewing court was required to assume that Court of General Sessions was fully aware of the rules announced in that decision and that the testimony of the witness had been received and considered with great caution. *L. D. Reed* v. *District of Columbia* (D.C. App. 1967, 226 A. 2d 581).

Burden of proof

The evidence adduced at habeas corpus proceeding did not support the trial court's finding that petitioner, who had originally been committed under the District of Columbia Sexual Psychopath Act, was likely to inflict injury, loss, pain or other evil on others by his sexual misconduct if he were released. *M. I. Millard* v. *D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

Habeas corpus petitioner who had been committed under the District of Columbia Sexual Psychopath Act had the burden to show that his past behavior, examined under the illumination provided by psychiatric evaluation of those actions, did not justify conclusion that he fell within statutory definition of one who was likely to inflict injury on others. *Id.*

Whether habeas corpus petitioner who was committed under the District of Columbia Sexual Psychopath Act should be released on habeas corpus would be determined on likelihood that he would, if released, be dangerous to others because of sexual misconduct. *Id.*

Petitioner who was confined in hospital pursuant to proceeding under District of Columbia Sexual Psycho-

path Act had the burden to show by a preponderance of the evidence that his continued confinement as sexual psychopath was not justified. *Id.*

Character evidence

Trial court, which expressly commented on evidence of good character of defendant convicted of committing lewd, obscene, and indecent act in department store restroom, had given due consideration to the character evidence. *L. D. Reed* v. *District of Columbia* (D.C. App. 1967, 226 A. 2d 581).

Conditions justifying commitment

Predictions of dangerousness which would justify commitment under the District of Columbia Sexual Psychopath Act requires determination of type of conduct of which individual may engage; likelihood or probability that he will indulge in that conduct; and effect that such conduct if engaged in will have on others. *M. I. Millard* v. *D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

In determining what acts may be considered in applying District of Columbia Sexual Psychopath Act, court must read "sexual" in common meaning of that term. *Id.*

Corroboration of single witness

In cases wherein testimony of only one witness to verbal invitation to sodomy is introduced, the trial court should require corroboration of the circumstances surrounding the parties at the time, such as presence at the alleged time and place and similar provable circumstances. *L. D. Reed* v. *District of Columbia* (D.C. App. 1967, 226 A. 2d 581).

In cases wherein testimony of only one witness to verbal invitation to sodomy is introduced, evidence of good character is particularly applicable. *Id.*

Testimony of a single witness to a verbal invitation to sodomy should be received and considered with great caution. *Id.*

Due Process

Since a proceeding under District of Columbia Sexual Psychopath Act is closely related to behavior of person rather than to his mental condition considered apart from his behavior, constitutional guaranties implicit in due process of law must come into play. *M. I. Millard* v. *D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

Entrapment

Evidence did not support contention made for first time on appeal from conviction for committing lewd, obscene, and indecent act that defendant had been entrapped. *L. D. Reed* v. *District of Columbia* (D.C. App. 1967, 226 A. 2d 581).

Evidence

Failure of the trial court in habeas corpus proceeding to distinguish between petitioner's sexual and nonsexual misconduct as a reason for his commitment under District of Columbia Sexual Psychopath Act and trial court's failure to evaluate the likelihood, as opposed to mere possibility, that petitioner would engage in sexual misconduct if released constituted reversible error. *M. I. Millard* v. *D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

Evidence in habeas corpus proceeding established that if released, the petitioner, who had been committed under District of Columbia Sexual Psychopath Act, would be unlikely to engage in sexual misconduct other than exhibitionism. *Id.*

Evidence at habeas corpus proceeding established that likelihood of serious injury to a child who might see the petitioner expose himself in public was too remote to justify commitment under District of Columbia Sexual Psychopath Act. *Id.*

Evidence at habeas corpus proceeding established that future sexual misconduct of petitioner, if any, was not sufficiently likely to cause kind of harm required by District of Columbia Sexual Psychopath Act to justify further commitment. *Id.*

Nonproduction of possible witness

That an unidentified man left washroom immediately prior to arrest of defendant for committing lewd, indecent, and obscene act there and that arresting officer did not detain the man or obtain his name and address did not give rise to presumption that the unidentified man's testimony would not have supported officer's testimony, in absence of solid foundation indicating that unidentified man had witnessed the acts and conduct of defendant. *L. D. Reed* v. *District of Columbia* (D.C. App. 1967, 226 A. 2d 581).

"Not insane" construed

The words "not insane" as used in District of Columbia Sexual Psychopath Act means "not mentally ill." *M. I. Millard* v. *D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

When words "not insane" in District of Columbia Sexual Psychopath law is read to mean "not mentally ill" the sole justification for commitment under the act is the patient's dangerousness. *Id.*

§ 22–1114. Disturbing religious congregation.

NOTES TO DECISIONS

Forfeiture of collateral

Forfeitures of collateral security could not be vacated on application made more than 30 days after forfeiture, despite claim that defendants had misunderstood or were misinformed as to date set for trial or were under impression that cases were further continued, where there was no testimony by defendants to this effect and counsel were fully aware of situation. *District of Columbia* v. *H. Evans et al.* (D.C. App. 1967, 225 A. 2d 309).

§ 22–1115. Interference with foreign diplomatic and consular offices, officers, and property.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–1116.

NOTES TO DECISIONS

Constitutionality

Since this section prohibiting protest demonstration nearer to embassy than 500 feet when protest is directed against foreign government operating embassy had once been held constitutional, and since failure to grant temporary restraining order against enforcement of the section would preclude plaintiffs from protesting in front of embassy but not 500 feet away and that such order would have effect of striking down statute as unconstitutional, the court will not grant such order. *Jews for Urban Justice, et al.* v. *J. W. Wilson* (1970, 311 F. Supp. 1158).

The contention that this section making it unlawful to bring into public disrepute any officer of any foreign government within 500 feet of any building used or occupied by foreign government or its representatives for official purposes is unconstitutional is without merit. *S. Zaimi* v. *United States* (D.C. App. 1970, 261 A. 2d 233).

Evidence—Sufficiency

Appellants contention that the evidence was insufficient to make out prima facie case of bringing into public disrepute any officer of any foreign government, merely because there was no warning to desist before arrest, and because there was no showing that statements were untrue or made with actual malice or that there was threat of breach of peace is not valid, since section under which defendant was convicted does not include those elements. *S. Zaimi* v. *United States* (D.C. App. 1970, 261 A. 2d 233).

Defendant, who shouted that Shah of Iran had come to Washington to purchase bombs to suppress people of Iran, brought Shah into public disrepute as proscribed by this section. *Id.*

§ 22–1116. Penalties for interference with foreign diplomatic and consular offices, officers, and property.

The Superior Court of the District of Columbia shall have jurisdiction of offenses committed in violation of section 22–1115, and any person convicted of violating any of the provisions of said section shall be punished by a fine not exceeding $100 or by imprisonment not exceeding sixty days, or both: *Provided, however,* That nothing contained in said section shall be construed to prohibit picketing, as a result of bona fide labor disputes regarding the

alteration, repair, or construction of either buildings or premises occupied, for business purposes, wholly or in part, by representatives of foreign governments. (Feb. 15, 1938, 52 Stat. 30, ch. 29, § 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 22–1117. Flying fire balloons or parachutes forbidden.

It shall not be lawful for any person or persons to set up or fly any fire balloon or parachute in or upon or over any street, avenue, alley, open space, public enclosure, or square within the limits of the city of Washington, under a penalty of not more than ten dollars for each and every such offense. (July 29, 1892, 27 Stat. 322, ch. 320, § 4; Feb. 11, 1895, 28 Stat. 650, ch. 79; July 29, 1970, Pub. L. 91–358, § 802, title VIII, 84 Stat. 667.)

AMENDMENT

1970—Section 802 of Act July 29, 1970, Public Law 91–358 amended section by striking out "set up or fly any kite, or".

EFFECTIVE DATE OF AMENDMENT

Section 901(b)(2) of Pub. L. 91–358, provided in part: "Title VIII [amending secs. 1–820 and 22–1117] shall take effect on the date of the enactment of this Act [July 29, 1970]."

§ 22–1119. False alarm of fire—Prosecution.

It shall be unlawful for any person or persons to wilfully or knowingly give a false alarm of fire within the District of Columbia, and any person or persons violating the provisions of this section shall upon conviction, be deemed guilty of a misdemeanor and be punished by a fine not exceeding one hundred dollars or by imprisonment for not more than six months, or by both such fine and imprisonment. Prosecutions for violation of the provisions of this section shall be on information filed in the Superior Court of the District of Columbia by the corporation counsel of the District of Columbia or by any of his assistants. (June 8, 1906, 34 Stat. 220, ch. 3055; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 22–1121. Disorderly conduct—Generally.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–109.

NOTES TO DECISIONS

Amendment of information

Amendment of information charging that defendant did interfere with person by jostling against such person and by placing hand in proximity of such person's pocket book and handbag by addition of statutory language of intent to provoke breach of peace or under circumstances that breach of peace may be occasioned thereby was not prejudicial to defendant's defense and was properly allowed. *K. M. Sams* v. *District of Columbia* (D.C. App. 1968, 244 A. 2d 479).

Construction

The qualifying language of the general disorderly conduct statute—"under circumstances such that a breach of the peace may be occasioned thereby"—need not be read into statute making it unlawful to curse, swear, or make use of profane language or indecent or obscene words in any public way. *G. A. Williams* v. *District of Columbia* (D.C. App. 1967, 227 A. 2d 60; rev'd, remanded and dismissed 419 F. 2d 638, 136 U.S. App. D.C. 56).

Enactments like statute prohibiting cursing, swearing, or using profane language or indecent or obscene words in public ways must contain qualifying language, and the qualifications must be applied within the framework of the clear and present danger test; otherwise they violate First Amendment. *Id.*

Elements of offense

While one of the elements of offense of disorderly conduct under statute is that the conduct must occur with intent to provoke a breach of the peace or occur under circumstances such that a breach of the peace may be occasioned thereby, it is not necessary in every case for the information to follow the precise language of the statute. *District of Columbia* v. *T. Jordan* (D.C. App. 1967, 232 A. 2d 298).

Evidence—Sufficiency of

Evidence was sufficient to sustain conviction of disorderly conduct. *K. M. Sams* v. *District of Columbia* (D.C. App. 1968. 244 A. 2d 479).

Indictment

Allegation of information charging that defendant was then and there a peeping Tom sufficiently charged that defendant's conduct was under circumstances such that a breach of the peace might be occasioned thereby, and information was not defective on grounds that it did not charge that defendant acted with an intent to provoke a breach of the peace or under circumstances such that a breach of the peace might be occasioned thereby. *District of Columbia* v. *T. Jordan* (D.C. App. 1967, 232 A. 2d 298).

Information—Sufficiency of

Informations charging defendants with jostling which failed to set forth names of the alleged victims was not a fatal omission. *K. M. Sams et ano.* v. *District of Columbia* (D.C. App. 1969, 249 A. 2d 230).

Informations which charged defendants with jostling and failed to allege that jostling was with intent to provoke a breach of peace or under circumstances such that a breach of the peace may be occasioned thereby did not require reversal where no objection to informations on this ground was made, and no showing of prejudice to either defendant was made. *Id.*

Information charging defendant arrested during peace demonstration with disorderly conduct in that she did with intent to provoke breach of peace congregate with others on public street and on grounds of United States Capitol, and did refuse to move, which failed to specify which of several potentially applicable statutes was basis of prosecution, was insufficient. *D. Feeley* v. *District of Columbia* (1967, 387 F. 2d 216, 128 U.S. App. D.C. 258).

Defendants, who were arrested after refusing to move out of corridor in House wing of Capitol building when ordered to do so by Capitol police, were entitled to know with certainty offense with which they were charged and possible penalty threatened and were entitled to definite reference to the law which they had allegedly violated, and thus where, notwithstanding request of defense, no one had given citation of statute under which prosecution was being had, other than statement of prosecutor that two sections were involved, convictions under section carrying lighter sentence, as requested by prosecutor, were required to be set aside. *D. Smith et al.* v. *District of Columbia* (1967, 387 F. 2d 233, 128 U.S. App. D.C. 275).

§ 22–1122. Rioting or inciting to riot—Penalties.

(a) A riot in the District of Columbia is a public disturbance involving an assemblage of five or more persons which by tumultuous and violent conduct or the threat thereof creates grave danger of damage or injury to property or persons.

(b) Whoever willfully engages in a riot in the District of Columbia shall be punished by imprisonment for not more than one year or a fine of not more than $1,000, or both.

(c) Whoever willfully incites or urges other persons to engage in a riot shall be punished by imprisonment for not more than one year or a fine of not more than $1,000, or both.

(d) If in the course and as a result of a riot a person suffers serious bodily harm or there is property damage in excess of $5,000, every person who willfully incited or urged others to engage in the riot shall be punished by imprisonment for not more than ten years or a fine of not more than $10,000, or both. (Dec. 27, 1967, Pub. L. 90–226, § 901, title IX, 81 Stat. 742.)

CODIFICATION

It appears that section 601 of title VI of Pub. L. 91–358, would have repealed title IX (classified as § 22–1122) of Pub. L. 90–226. Apparently it was the intent to repeal title X of Pub. L. 90–226. To correct this error, Congress enacted section 2(b) of Pub. L. 91–530. The applicable sections read as follows:

PUBLIC LAW 91–358, JULY 29, 1970

TITLE VI—ABOLITION OF COMMISSION ON REVISION OF THE CRIMINAL LAWS OF THE DISTRICT OF COLUMBIA

ABOLITION OF COMMISSION

SEC. 601. Title IX of the Act entitled "An Act relating to crime and criminal procedure in the District of Columbia", approved December 27, 1967 (Public Law 90–226), is repealed.

PUBLIC LAW 91–530, DEC. 7, 1970

Sec. 2(a) * * *

(b)(1) Section 601 of the Act of July 29, 1970 (84 Stat. 667), is amended by striking out "IX" and inserting in lieu thereof "X".

(2) It is the intent of Congress that the amendment made by paragraph (1) of this subsection shall (A) revive title IX of the Act of December 27, 1967 (81 Stat. 742), as of the date of enactment of this Act, and (B) repeal title X of such Act of December 27, 1967 (81 Stat. 742), as of the date of enactment of this Act.

SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967

Section 1101, Act Dec. 27, 1967, Pub. L. 90–226, provided:

Whoever, prior to the date of enactment of this Act [Pub. L. 90–226], commits any act or engages in any conduct which constitutes an offense under provision of law amended by this Act [Amendments of sections, 4–140, 15–714, 15–716, 22–501, 22–703, 22–1513, 22–1801, 22–2001, 22–2901, 22–3105, 22–3201, 22–3202, 23–610, 23–901, 23–903, 24–301, and enactments of sections 4–140a, 4–150a, and 22–1122, and amendments of 18 U.S.C. 4122, 5024, and 5025], shall be sentenced in accordance with the law in effect on the date he commits such acts or engages in such conduct.

SEPARABILITY OF PROVISIONS

Section 1102, Act Dec. 27, 1967, Pub. L. 90–226, provided:

If any provision of or any amendment made by this Act [Pub. L. 90–226; for provisions and amendments made by this Act, see enumeration in note above under heading, "Sentence for offenses committed prior to Dec. 27, 1967."] or the application thereof to any person or circumstance is held invalid, the other provisions of or other amendments made by this Act and the application of such provisions and amendments to other persons or circumstances shall not be affected thereby.

CROSS REFERENCES

Disqualification from holding any position in the District of Columbia Government, for five years, after conviction of inciting a riot or civil disorder, see 5 U.S.C. § 7313.

Other provisions relating to civil disorders, penalties and definitions, see 18 U.S.C. §§ 231–233.

Other provisions relating to riots, see 18 U.S.C. §§ 2101–2.

NOTES TO DECISIONS

Constitutionality

This section is not unconstitutional as being unduly vague in its employment of words such as "public disturbance," "tumultuous and violent conduct," and "grave danger of damage or injury." *United States* v. *C. Mathews* (1969, 419 F. 2d 1177, 136 U.S. App. D.C. 196).

The word "engages" as used in statute prohibiting willfully engaging in a riot was not so vague as to make statute unconstitutional. *United States* v. *J. Jeffries et al.* (1968, 45 F.R.D. 110).

Where indictments uniformly accused the defendants in other counts with burglary and often larceny as well, which took place at same time and same place, riot statute that was basically concerned with conduct rather than free expression did not unconstitutionally intrude on defendants' First Amendment rights. *Id.*

A riot statute may limit speech under certain circumstances. *Id.*

Construction

The court concluded that any person who, on encountering a riot, openly seizes goods he knows to have been looted or accessible to him only by virtue of disturbance will be deemed to have aided, encouraged and furthered the riot and, by so doing, to have engaged in it within meaning of this section. *United States* v. *C. Mathews* (1969, 419 F. 2d 1177, 136 U.S. App. D.C. 196).

The public disturbance with which this section deals is undoubtedly compounded of unlawful conduct variously deriving from purposeful destructiveness and foolish greed, and the fact that latter does not offer as ugly a face does not mean that the two do not interact upon each other and make a common, albeit perhaps unequal, contribution to the evil against which the statute is aimed. *Id.*

Evidence

The defendants need not have been acting in concert in order to be convicted of engaging in a riot and proof as to conduct of each defendant was proof as to other two. *United States* v. *J. Jeffries et al.* (1968, 45 F.R.D. 119).

Since evidence of a riot includes proof of assemblage, proof of acts of other two defendants would be admissible with respect to acts of any one defendant. *Id.*

Indictment

A failure to allege an unlawful entry in count charging second-degree burglary amounted to no more than harmless error. *United States* v. *J. Jeffries et al.* (1968, 45 F.R.D. 110).

Since no indictment for a violation of riot statute had been returned charging engaging in riot alone but rather always that count was coupled with counts charging burglary and grand or petty larceny, the grand jury considered engaging in a riot in violation of statute in conjunction with separate but immediately related criminal conduct and there was no loose, unguided approach to indictments returned by grand jury under riot statute that would deprive defendants of their constitutional rights. *Id.*

Instructions

The court's refusal to give defendant's requested instruction that jury must acquit him of riot if they believed his testimony that he was not within store being burglarized in riot district was not error, inasmuch as one who knowingly participates in looting phase of a riot can, without constitutional transgression, be comprehended by Congress within those identified by this section as engaging in the proscribed "violent and tumultuous conduct." *United States* v. *C. Mathews* (1969, 419 F. 2d 1177, 136 U.S. App. D.C. 196).

Joint trial

By participating in a mob-like action, defendants had made themselves liable to a joint trial on count charging engaging in a riot. *United States* v. *J. Jeffries et al.* (1968, 45 F.R.D. 119).

Partial acquittal

Although the defendant was acquitted on charge of burglarizing a liquor store in a riot district did not of itself establish that jury accepted defendant's testimony that he did not enter store, thereby making it erroneous for trial court to interpret anti-riot statute as permitting jury to find defendant guilty of engaging in a riot, since, absent an instruction to the effect that jury should acquit defendant of riot count if it accepted his testimony as true, it was impossible to make any assumption as to precisely how jury viewed facts. *United States* v. *C. Mathews* (1969, 419 F. 2d 1177, 136 U.S. App. D.C. 196).

Chapter 12.—EMBEZZLEMENT

§ 22–1201. Embezzlement of property of District of Columbia.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–1204.

NOTES TO DECISIONS

Impeachment

In this case, the court held that, inasmuch as the defendant's prior convictions of unauthorized use of vehicle and petit larceny were introduced in evidence on his own direct examination in effort to support contention that he was framed with respect to grand larceny charge by one of government's witnesses, he could not successfully complain of alleged error in permitting him to be impeached by prior convictions, notwithstanding decisions stating that the offense of taking property without right does not bear on credibility. *United States* v. *G. W. Lucas* (1970, 426 F. 2d 664, —— U.S. App. D.C. ——).

§ 22–1202. Embezzlement by agent, attorney, clerk, servant, or agent of a corporation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–1203 to 22–1205, 22–1207.

§ 22–1203. Embezzlement of note not delivered.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–1204, 22–1207.

§§ 22–1204 to 22–1206.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 22–1207.

§ 22–1207. Punishment for violations of sections 22–1202 to 22–1206.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–1409.

§ 22–1208. Conversion by commission merchant, consignee, person selling goods on commission, and auctioneers.

If any factor, commission merchant, consignee, or any person selling goods on commission, or the agent clerk, or servant of such person, shall convert to his own use in the District of Columbia any provisions, fruits, flour, meat, butter, cheese, or any other goods, merchandise, or property, or the proceeds of the same, and shall fail to pay over the avails or proceeds less his proper charges, within five days after receiving the money or its equivalent from the purchaser or purchasers of said goods or produce, and after demand made therefor by the person entitled to receive the same, or his or her duly-authorized agent, he shall be deemed guilty of a misdemeanor, and upon information and conviction in the Superior Court of the District of Columbia shall be fined not more than one thousand dollars or be imprisoned not exceeding six months, or both, in the discretion of the court. The provisions of this section shall be applicable to all licensed auctioneers, their agents and employees. (Mar. 21, 1892, 27 Stat. 10, ch. 19; July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par. 8; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 22–1211. Taking property without right.

NOTES TO DECISIONS

Construction

Statute relating to taking and carrying away of another's property without right to do so describes a misdemeanor and can be violated without specific intent, and provides a deterrent to self-help by a winning gambler without rejecting principle that specific intent turns on actor's state of mind, not upon an objective fact. *J. W. Richardson* v. *United States* (1968, 403 F. 2d 574, 131 U.S. App. D.C. 168).

Lesser included offense rule

Lesser included offense rule was properly applied when court instructed jury that the offense of larceny from interstate commerce, for which offense appellant was charged, included the lesser offense of taking property without right, an offense for which appellant was not charged, and, since sentence for taking property without right ran concurrently with sentence for unlawful entry, court need not consider claim of error predicated on the instruction. *W. E. Humphrey* v. *United States* (D.C. App. 1967, 236 A. 2d 438).

Thief

"Thief" is used generically in vagrancy statute and may be defined as one who takes property of another without knowledge or consent of latter; and a conviction under this section making it a misdemeanor to take and carry away property of another without right to do so rendered convict a "known thief" for purposes of vagrancy statute. *Harris* v. *District of Columbia* (D.C. Mun. App. 1957, 132 A. 2d 152; reversed 251 F. 2d 913, 102 U.S. App. D.C. 202).

The word "thief" as used in section 22–3302 does not cover a person who has been guilty only of unauthorized borrowing. *Harris v. District of Columbia* (1958, 251 F. 2d 913, 102 U.S. App. D.C. 202).

Chapter 13.—FALSE PRETENSES—FALSE PERSONATION

§ 22–1301. False pretenses.

(a) Whoever, by any false pretense, with intent to defraud, obtains from any person any service or anything of value, or procures the execution and delivery of any instrument of writing or conveyance of real or personal property, or the signature of any person, as maker, indorser, or guarantor, to or upon any bond, bill, receipt, promissory note, draft, or check, or any other evidence of indebtedness, and whoever fraudulently sells, barters, or disposes of any bond, bill, receipt, promissory note, draft, or check, or other evidence of indebtedness, for value, knowing the same to be worthless, or knowing the signature of the maker, indorser, or guarantor thereof to have been obtained by any false pretense,

shall, if the value of the property or the sum or value of the money, property, or service so obtained, procured, sold, bartered, or disposed of is $100 or upward, be imprisoned not less than one year nor more than three years; or, if less than that sum, shall be fined not more than $1,000 or imprisoned for not more than one year, or both.

(b) (1) Whoever obtains, at a hotel, motel, or other establishment which provides lodging to transient guests—

(A) lodging, food, or any other item of value, with intent to defraud the proprietor or manager of such establishment, or

(B) credit by the use of false pretenses,

shall, if the unpaid amount of such lodging, food, or other item of value is $100 or more, be guilty of a felony and fined not more than $3,000 or imprisoned for not less than one year nor more than three years, or both; or if such unpaid amount is less than $100, be guilty of a misdemeanor and fined not more than $1,000 or imprisoned not more than one year, or both.

(2) Proof that a person—

(A) obtained lodging, food, any other item of value, or credit, at a hotel, motel, or other establishment which provides lodging to transient guests and failed to pay in full upon demand any amount then due for such credit or item of value, or

(B) departed or removed his baggage from a hotel, motel, or other establishment which provides lodging to transient guests without the express consent of the proprietor or manager of such establishment and without first paying in full any amount due for food, lodging, any other item of value, or credit,

shall be prima facie evidence that the acts specified in clause (A) of paragraph (1) were committed with fradulent intent.

(c) Whoever, in the District of Columbia, registers at a hotel, motel, or other establishment which provides lodging to transient guests, under any name or address other than his actual name or address, with intent to defraud the proprietor or manager of such establishment, shall be guilty of a misdemeanor and fined not more than $500 or imprisoned not more than six months, or both. (Mar 3, 1901, 31 Stat. 1326, ch. 854, § 842; June 30, 1902, 32 Stat. 535, ch. 1329; Aug. 12, 1937, 50 Stat. 628, ch. 599; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 29, 1953, 67 Stat. 99, ch. 159, § 215(e); July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; Oct. 22, 1970, Pub. L. 91–497, § 1, 84 Stat. 1093.)

AMENDMENT

1970—Section 1 of Act Oct. 22, 1970, Pub. L. 91–497, amended section—

(1) by inserting "(a)" immediately before "Whoever";

(2) by inserting "any service or" immediately before "anything of value";

(3) by striking out "value of the money or property" and inserting in lieu thereof "value of the money, property, or service";

(4) by striking out "$200" and inserting in lieu thereof "$1,000";

(5) by striking out the second sentence and inserting in lieu thereof new subsecs. (b) and (c) to read as above set out. For provisions of section before this amendment, see 1967 edition of the Code.

NOTES TO DECISIONS

Direct evidence

Direct evidence by a victim is not necessary to prove the elements of obtaining and reliance as required by this section. *D. T. Hymes* v. *United States* (D.C. App. 1970, 260 A. 2d 679).

In this case the introduction into evidence of seven purchase receipts for gasoline sales would support inference that gasoline was provided with reliance on validity of the credit card and authorized use thereof and the judgment of conviction was affirmed. *Id.*

Elements of crime

Elements of false pretenses are false representation, knowledge of falsity, intent to defraud, reliance by defrauded party, and obtaining something of value. *R. A. Willgoos* v. *United States* (D.C. App. 1967, 228 A. 2d 635).

Elements of offense

The elements of the crime of false pretenses are a false representation, knowledge of its falsity, an intent to defraud, reliance on the misrepresentation by the defrauded party, and the obtaining of something of value. *J. R. Marganella* v. *United States* (D.C. App. 1970, 268 A. 2d 803.)

Evidence

Evidence did not sustain conviction of obtaining hotel lodging under false pretenses, notwithstanding defendant's failure to pay within one week after checking out, in view of showing of defendant's efforts to pay. *R. A. Willgoos* v. *United States* (D.C. App. 1967, 228 A. 2d 635).

—— Sufficiency

The evidence sustained conviction for attempted false pretenses involving misuse of a credit card. *J. R. Marganella* v. *United States* (D.C. App. 1970, 268 A. 2d 803.)

In prosecution for attempted false pretenses involving misuse of credit card in connection with motel registration, the necessity of producing motel desk clerk was obviated by introduction of motel's records. *Id.*

Knowledge of falsity

Finding of knowledge of falsity may be based on reasonable inferences from concrete facts in evidence, including conduct of parties to transaction, their utterances, the position occupied by accused, and all circumstances surrounding the transaction. *R. A. Willgoos* v. *United States* (D.C. App. 1967, 228 A. 2d 635).

Unauthorized use of credit card

The unauthorized use of a credit card could be a violation of this section provided all elements of false pretenses are proven. *D. T. Hymes* v. *United States* (D.C. App. 1970, 260 A. 2d 679).

Waiver of trial by jury

In this prosecution for false pretenses where defendant had a right to trial by jury, but neither defendant nor his counsel objected to proceeding to trial without jury, and there was discussion in open court at prior hearing in case concerning a jury trial for defendant and official court entry on information stated "Jury Trial Demand Withdrawn," absence from transcript of any express waiver of defendant's right to jury trial was cured. *C. Banks* v. *United States* (D.C. App. 1970, 262 A. 2d 110).

The court held that, in criminal prosecution, where trial is had without jury, trial court is responsible for seeing to it by inquiry of defendant himself that he understands and knowingly and voluntarily waives his right to trial by jury and trial judge must also assure that such waiver is contained in the record as it occurred rather than merely as a rubber stamp entry on back of information. *Id.*

§ 22–1303. False personation before court, officers, notaries.

NOTES TO DECISIONS

Requiring defendant to be sworn as witness

By requiring defendant, prior to trial judge's ruling on extent to which trial judge would permit defendant to be impeached by his past record, to take witness stand and be sworn as a witness before jury, trial judge pre-empted defendant's discretion regarding his decision whether to testify in his own behalf and, therefore, committed prejudicial error. *J. H. Jones* v. *United States* (D.C. App. 1968, 243 A. 2d 674).

§ 22–1304. Falsely impersonating public officer or minister.

Whoever falsely represents himself to be a judge of the Superior Court of the District of Columbia, notary public, police officer, or other public officer, or a minister qualified to celebrate marriage, and attempts to perform the duty or exercise the authority pertaining to any such office or character, or having been duly appointed to any of such offices shall knowingly attempt to act as any such officers after his appointment or commission has expired or he has been dismissed from such office, shall suffer imprisonment in the penitentiary for not less than one year nor more than three years. (Mar. 3, 1901, 31 Stat. 1330, ch. 854, § 860; Feb. 17, 1909, 35 Stat. 623, ch. 134; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS

Reversal on grounds of inadequate defense

Conviction for impersonating an officer was reversed and new trial ordered in view of defense's failure to call defendant to stand to rebut government's evidence that badge displayed by defendant who contended that he had exhibited a special police officer badge was not of the type officially issued to special police officers, failure to subpoena an allegedly material witness, presence of hearsay testimony and closeness of case. *E. E. Dyer* v. *United States* (1967, 379 F. 2d 89, 126 U.S. App. D.C. 312).

§ 22–1305. False personation of inspector of departments of District of Columbia.

It shall be unlawful for any person in the District of Columbia to falsely represent himself or herself as being an inspector of the health department of said District, or an inspector of any department of the District government; and any person so offending shall be deemed guilty of a misdemeanor, and on conviction in the Superior Court of the District of Columbia shall be punished by a fine of not less than ten dollars nor more than fifty dollars for the first offense, and for each subsequent offense by a fine of not less than fifty dollars nor more than one hundred dollars, or imprisonment in the jail of the District not exceeding six months, or both, in the discretion of the court. (Mar 2, 1897, 29 Stat. 619, ch. 364; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8; 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 14.—FORGERY—FRAUDS

§ 22–1401. Forgery.

NOTES TO DECISIONS

Appeal and error

In prosecution for forging and uttering department store charge slips, although the trial court charged that falsity was an element of the offense, it erred in refusing to advise jury that proof of lack of authority to sign for another was required to establish falsity; in view of overwhelming evidence, however, the error was harmless. *United States* v. *J. H. Gilbert* (1970, 433 F. 2d 1172, — U.S. App. D.C. —).

Burden of proof

The Government has the burden of proving all elements of offense of forging and uttering department store charge slips, and there is no obligation on defendant to offer proof of authority to sign name of another. *United States* v. *J. H. Gilbert* (1970, 433 F. 2d 1172, — U.S. App. D.C. —).

Evidence

Testimony and manner in which it was given, with defendant's acquiescence, in forgery prosecution, supported inference that signatures had not been authorized by person whose signatures they purported to be. *W. E. Hough* v. *United States* (1968, 397 F. 2d 708, 130 U.S. App. D.C. 147).

Any error in forgery prosecution in permitting store manager to testify to policy store had adopted in effort to catch people who had been stealing money orders and checks was harmless in light of all evidence. *Id.*

Instructions

Whether lack of authority to sign name of another is considered separate element of offense of forgery and uttering department store charge slips or part of element of falsity, the jury must be advised that without proof of lack of authority, the prosecution may not succeed. *United States* v. *J. H. Gilbert* (1970, 433 F. 2d 1172, — U.S. App. D.C. —).

§ 22–1405. Taking away or concealing writings.

NOTES TO DECISIONS

Copies of former wills

The court held that it is the clear import of existing statutes, that copies of former wills, whether executed or unexecuted, must be made available to the court under threat of criminal penalty. *C. H. Doherty, Sr., et al.* v. *V. Fairall, et al.* (1969, 413 F. 2d 381, 134 U.S. App. D.C. 107).

§ 22–1408. Manufacture, sale, offer for sale, possession of slugs or device to operate coin-controlled mechanism.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–1409.

§ 22–1410. Making, drawing, or uttering check, draft, or order with intent to defraud—Proof of intent—"Credit" defined.

Any person within the District of Columbia who, with intent to defraud, shall make, draw, utter, or deliver any check, draft, order, or other instrument for the payment of money upon any bank or other depository, knowing at the time of such making, drawing, uttering, or delivering that the maker or drawer has not sufficient funds in or credit with such bank or other depository for the payment of such check, draft, order, or other instrument in full upon its presentation, shall, if the amount of such check, draft, order, or other instrument is $100 or more, be guilty of a felony and fined not more than $3,000 or imprisoned for not less than one year nor more than three years, or both; or if the amount of such check, draft, order, or other instrument is less than $100,

be guilty of a misdemeanor and fined not more than $1,000 or imprisoned not more than one year, or both. As against the maker or drawer thereof the making, drawing, uttering, or delivering by such maker or drawer of a check, draft, order, or other instrument, payment of which is refused by the drawee because of insufficient funds of the maker or drawer in its possession or control, shall be prima facie evidence of the intent to defraud and of knowledge of insufficient funds in or credit with such bank or other depository, provided such maker or drawer shall not have paid the holder thereof the amount due thereon, together with the amount of protest fees, if any, within five days after receiving notice in person, or writing, that such check, draft, order, or other instrument has not been paid. The word "credit," as used herein, shall be construed to mean arrangement or understanding, express or implied, with the bank or other depository for the payment of such check, draft, order, or other instrument. (July 1, 1922, 42 Stat. 820, ch. 273; Oct. 22, 1970, Pub. L. 91–497, § 3, 84 Stat. 1094.)

AMENDMENT

1970—Section 3 of Act Oct. 22, 1970, Pub. L. 91–497, amended section—

(1) by striking out "or order" in each place it appears and inserting in lieu thereof "order, or other instrument";

(2) by striking out "shall be guilty of a misdemeanor punishable by imprisonment for not more than one year or fined not more than $1,000, or both." and inserting in lieu thereof "shall, if the amount of such check, draft, order, or other instrument is $100 or more, be guilty of a felony and fined not more than $3,000 or imprisoned for not less than one year nor more than three years, or both; or if the amount of such check, draft, order, or other instrument is less than $100, be guilty of a misdemeanor and fined not more than $1,000 or imprisoned not more than one year, or both.";

(3) by inserting, in the second sentence, after "notice in person, or writing, that such" the following: "check,".

CROSS REFERENCE

Allegation and proof of intent to defraud, see § 23–322.

§ 22–1411. Fraudulent advertising.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–1412, 22–1413.

§ 22–1412. Prosecution under section 22–1411.

Prosecution under section 22–1411 shall be in the Superior Court of the District of Columbia upon information filed by the United States Attorney for the District of Columbia, or one of his assistants. (May 29, 1916, 39 Stat. 165, ch. 130, § 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 909, ch. 646, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 22–1414. Fraudulently tampering with jury box or contents—Collusion in drawing jurors.

If any person shall fraudulently tamper with any box or wheel used or intended by the jury commission for the names of prospective jurors, or of prospective condemnation jurors or commissioners, or shall fraudulently tamper with the contents of any such box or wheel, or with any jury list, or be guilty of any fraud or collusion with respect to the drawing of jurors or condemnation jurors or commissioners, or if any jury commissioner shall put in or leave out of any such box or wheel the name of any person at the request of such person, or at the request of any other person, or if any jury commissioner shall wilfully draw from any such box or wheel a greater number of names than is required by the court, any such person or jury commissioner so offending shall for each offense be punished by a fine of not more than $500 or imprisonment in the District jail or workhouse for not more than one year, or both. (Mar. 3, 1901, 31 Stat. 1223, ch. 854, § 213; Apr. 19, 1920, 41 Stat. 560, ch. 153, § 213; Mar. 27, 1968, Pub. L. 90–274, § 103(f), 82 Stat. 63.)

AMENDMENTS

1968—Section 103(f), act Mar. 27, 1968, Pub. L. 90–274, amended section by inserting "or wheel" after the word "box" each time it appears in the section.

EFFECTIVE DATE OF 1968 AMENDMENT AND APPLICABILITY IN CERTAIN CASES

Section 104, act Mar. 27, 1968, Pub. L. 90–274, provided that: "This Act [Repealing, §§ 7–213a, 13–701, 11–2301 through 11–2305 (except the last par. of 11–2302) 11–2307 through 11–2312, amending §§ 7–318, 11–2306, 16–1312, 16–1357 and 22–1414] shall become effective two hundred and seventy days after the date of enactment: *Provided,* That this Act shall not apply in any case in which an indictment has been returned or petit jury empaneled prior to such effective date."

SHORT TITLE

The enacting clause of act Mar. 27, 1968, Pub. L. 90–274, provides: "That this Act [Amending chapter 121 of title 28, U.S. Code and certain other sections of title 28, U.S. Code; repealing sections 7–213a, 13–701, 11–2301, 11–2302 in part, 11–2303 to 11–2305, and 11–2307 to 11–2312 inclusive and amending sections 7–318, 16–1312, 16–1357, 22–1414 and 11–2306] may be cited as the 'Jury Selection and Service Act of 1968' ".

Chapter 15.—GAMBLING

§ 22–1501. Lotteries—Promotion—Sale or possession of tickets.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–1502, 22–1505, 23–546.

NOTES TO DECISIONS

Evidence—Admissibility

Even if documents which the defendant, charged with violation of lottery laws, sought to introduce into evidence showed that others were engaging in activities which the defendant considered to be lotteries uncondemned by law, the offer was insufficient to show statutory discrimination in violation of statute and court properly refused to admit same. *J. S. Washington* v. *United States* (1968, 401 F. 2d 915, 130 U.S. App. D.C. 374).

Possession of tickets

Possession of number slips is prima facie evidence of possessor's involvement in an illegal lottery. *$1,407.00 in United States Currency, et ano.* v. *District of Columbia* (D.C. App. 1968, 242 A. 2d 217).

Prima facie evidence

The appellant's possession of numbers paraphernalia on premises was prima facie evidence of her participation in illegal lottery. *$3,265.28 in United States Currency, et al.* v. *District of Columbia* (D.C. App. 1969, 249 A. 2d 516).

§ 22–1502. Possession of lottery or policy tickets.

NOTES TO DECISIONS

Condemnation and forfeiture

Condemnation and forfeiture of moneys seized from defendant's person at time of his arrest was warranted by evidence, including evidence that defendant attempted to conceal the money from the arresting officers and that, although he claimed that moneys seized represented savings which he intended to use to purchase a business, he was admittedly unfamiliar with business which he claimed to be planning to purchase, the person from whom he expected to make the purchase and the terms of the purchase. *$1,407.00 in United States Currency, et ano.* v. *District of Columbia* (D.C. App. 1968, 242 A. 2d 217).

Court's failure to rule on admissibility of evidence

In a case where there was considerable oral testimony from arresting officers that number slips were found in the front bedroom occupied by defendant, trial court's failure to rule on government's exhibits consisting of seized number slips and other documents in bedrooms and hallway of house occupied by defendant prior to beginning of defendant's case, although constituting error, was not prejudicial because of defendant's failure to bring the matter to court's attention and obtain a ruling. *L. Harris* v. *United States* (D.C. App. 1969, 254 A. 2d 726).

To prove defendant's possession of number slips it is not essential that the slips be received in evidence. *Id.*

Evidence—Admissibility

Since the police officers had what they believed was credible information that defendant who fit description given officers had a gun in his pocket, since the defendant was reluctant to remove his hand from his pocket, and since there was obvious large bulge in pocket when he did remove his hand, officers were justified in conducting a limited protective search for weapons, and removal of currency and numbers slips by officer who claimed to have found gun was reasonable and fact numbers slips and money rather than gun were removed from pocket did not render those items inadmissible. *United States* v. *M. Dowling* (D.C. App. 1970, 271 A. 2d 406).

—— Sufficiency of

Evidence was sufficient to sustain conviction for possession of numbers slips. *B. R. Burrell* v. *United States* (D.C. App. 1969, 252 A. 2d 897).

Ruling of district court as binding on Court of General Sessions

United States district court decision, in prosecution for narcotics violation, which suppressed certain evidence as products of illegal search and seizure was not binding on District of Columbia Court of General Sessions, where defendant was charged with possession of prohibited weapon and possession of numbers slips, and which had held previously to United States District Court ruling that certain evidence, which was seized under same circumstances as evidence in federal prosecution, was admissible. *B. R. Burrell* v. *United States* (D.C. App. 1969, 252 A. 2d 897).

Search and seizure

A defendant, who was lawfully arrested for operating automobile without valid permit, was taken to police station in his own automobile, and charged with driving without a valid permit, possession of prohibited weapon and possession of numbers slips, but did not protest or withhold his consent to use by police of his automobile to drive him to police station and was not coerced in any way, there was no seizure of defendant's automobile by police prior to arrival at police station. *B. R. Burrell* v. *United States* (D.C. App. 1969, 252 A. 2d 897).

§ 22–1504. Gaming—Setting up gaming table—Inducing play.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–1502, 22–1505, 22–1057.

§ 22–1505. Gambling premises—Definition—Prohibition against maintaining—Forfeiture—Liens—Deposit of moneys in Treasury—Penalty—Subsequent offenses.

* * * * *

(c) All moneys, vehicles, furnishings, fixtures, equipment, stock (including, without limitation, furnishings and fixtures adaptable to nongambling uses, and equipment and stock for printing, recording, computing, transporting, safekeeping, or communication), or other things of value used or to be used—

(1) in carrying on or conducting any lottery, or the game or device commonly known as a policy lottery or policy, contrary to the provisions of section 22–1501;

(2) in setting up or keeping any gaming table, bank, or device contrary to the provisions of 22–1504; or

(3) in maintaining any gambling premises,

shall be subject to seizure by any member of the Metropolitan Police force, or the United States Park Police, or the United States marshal, or any deputy marshal, for the District of Columbia, and any property seized regardless of its value shall be proceeded against in the Superior Court of the District of Columbia by libel action brought in the name of the District of Columbia by the Corporation Counsel or any of his assistants, and shall, unless good cause be shown to the contrary, be forfeited to the District of Columbia and shall be made available for the use of any agency of the government of the District of Columbia, or otherwise disposed of as the Commissioners of the District of Columbia may, by order or by regulation, provide: *Provided*, That if there be bona fide liens against the property so forfeited, then such property shall be disposed of by public auction. The proceeds of the sale of such property shall be available, first, for the payment of all expenses incident to such sale; and, second, for the payment of such liens; and the remainder shall be deposited in the Treasury of the United States to the credit of the District of Columbia. To the extent necessary, liens against said property so forfeited shall, on good cause shown by the lienor, be transferred from the property to the proceeds of the sale of the property.

* * * * *

(As amended, July 29, 1970, Pub. L. 91–358, title I, §155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (c) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–1507, 23–546.

NOTES TO DECISIONS

Condemnation and forfeiture

Condemnation and forfeiture of moneys seized from defendant's person at time of his arrest was warranted by evidence, including evidence that defendant attempted

to conceal the money from the arresting officers and that, although he claimed that money seized represented savings which he intended to use to purchase a business, he was admittedly unfamiliar with business which he claimed to be planning to purchase, the person from whom he expected to make the purchase and the terms of the purchase. *$1,407.00 in United States Currency, et ano.* v. *District of Columbia* (D.C. App. 1968, 242 A. 2d 217).

Evidence—Sufficiency

Evidence was sufficient to support forfeiture judgment in relation to money allegedly used in carrying on or conducting a lottery. *$6,200.00 in United States Currency* v. *District of Columbia* (D.C. App. 1969, 250 A. 2d 551).

A showing by preponderance of the evidence that moneys found on defendant were in fact used or to be used in an unlawful gambling operation is sufficient to meet statutory test required for forfeiture of property *$1,407.00 in United States Currency et ano.* v. *District of Columbia* (D.C. App. 1968, 242 A. 2d 217).

Nature of libel action

Libel actions for forfeiture of monies used or to be used in carrying on lottery are civil in nature and government need only prove its case by preponderance of the evidence. *$3,265.28 in United States Currency, et al.* v. *District of Columbia* (D.C. App. 1969, 249 A. 2d 516).

§ 22–1506. Three-card monte and confidence games.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–1507, 23–304.

§ 22–1508. Gambling pools and bookmaking—Athletic contest defined.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–1502.

§ 22–1509. Bucketing, and bucket-shopping and bucket-shops—Definitions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–1510 to 22–1512.

§ 22–1510. Penalty for bucketing or keeping bucket shop.

Any person who makes or offers to make any contract defined in section 22–1509, or who is the keeper of any bucket-shop, shall, upon conviction thereof, be punished by a fine not exceeding one thousand dollars or by imprisonment for not more than one year. Any person who shall be convicted of a second offense shall be punished by imprisonment for not more than five years. The continuing of the keeping of a bucket-shop by any person after the first conviction therefor shall be deemed a second offense under sections 22–1509 to 22–1512. If a domestic corporation shall be convicted of a second offense, the Superior Court of the District of Columbia shall have jurisdiction, upon an information in equity in the name of the United States attorney for the District of Columbia, on the relation of the commissioners of the District of Columbia, to dissolve the corporation; and if a foreign corporation shall be convicted of a second offense, the Superior Court of the District of Columbia shall have jurisdiction, in the same manner, to restrain the corporation from doing business in the District of Columbia. (Mar. 3, 1901, ch. 854, § 869b, as added Mar. 1, 1909, 35 Stat. 671, ch. 233, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(1)(E), 84 Stat. 570.)

CODIFICATION

The reference to section 23–1509 in the second line of this section as it appears in the main edition is an error. It should read 22–1509.

AMENDMENT

1970—Section 155(c)(1)(E) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–1509, 22–1511, 22–1512.

§ 22–1511. Penalty for communicating, receiving, exhibiting, or displaying quotations of prices.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–1509, 22–1510, 22–1512.

§ 22–1512. Bucketing—Written statement to be furnished—Contents.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–1509 to 22–1511.

§ 22–1513. Corrupt influence in connection with athletic contests.

* * * * *

(f) Nothing in this section shall be construed to prohibit the giving or offering of any bonus or extra compensation to any manager, coach, or professional player, or to any league, association, or conference for the purpose of encouraging such manager, coach, or player to a higher degree of skill, ability, or diligence in the performance of his duties. (As amended, Dec. 27, 1967, Pub. L. 90–226, § 604, title VI, 81 Stat. 737.)

AMENDMENT

1967—Section 604, Act Dec. 27, 1967, Pub. L. 90–226, amended section by adding subsection (f).

SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967

Section 1101, Act Dec. 27, 1967, Pub. L. 90–226, provided:

Whoever, prior to the date of enactment of this Act, [Pub. L. 90–226] commits any act or engages in any conduct which constitutes an offense under provision of law amended by this Act, [Amendments of sections, 4–140, 15–714, 15–716, 22–501, 22–703, 22–1513, 22–1801, 22–2001, 22–2901, 22–3105, 22–3201, 22–3202, 23–610, 23–901, 23–903, 24–301 and enactments of sections 4–140a, 4–150a and 22–1122, and amendments of 18 U.S.C. 4122, 5024 and 5025] shall be sentenced in accordance with the law in effect on the date he commits such acts or engages in such conduct.

SEPARABILITY OF PROVISIONS

Section 1102, Act Dec. 27, 1967, Pub. L. 90–226, provided:

If any provision of or any amendment made by this Act [Pub. L. 90–226; for provisions and amendments made by this Act, see enumeration in note above under heading, "Sentence for offenses committed prior to Dec. 27, 1967."] or the application thereof to any person or circumstance is held invalid, the other provisions of or other amendments made by this Act and the application of such provisions and amendments to other persons or circumstances shall not be affected thereby.

§ 22–1515. Presence in illegal establishments.

NOTES TO DECISIONS

Constitutionality

If defendant charged under this section with knowing presence in narcotics or other illegal establishment chooses not to testify to attempt to establish defense of "good account," this in no way lessens government's burden of proving knowing presence in illegal establishment and does not expose defendant to added criminal responsibility; and thus, section defining such offense does not violate privilege against self-incrimination. *United States* v. *M. C. McClough et al.* (D.C. App. 1970, 263 A. 2d 48).

Presence in illegal establishment, unlike standing or "loitering" on street corner, is not presumptively innocent behavior, and thus a defendant may constitutionally be called upon to explain such presence. *Id.*

Good account

In context of this section defining as crime one's knowing presence in illegal narcotics, gambling or liquor establishment, if defendant is unable to give good account of his presence, culpable intent being necessary element of the offense, "good account" takes on narrow meaning of demonstrating that one's knowing presence in the illegal establishment was for lawful purpose and not as participant in the illegal activity taking place there. *United States* v *M. C. McClough et al.* (D.C. App. 1970, 263 A. 2d 48).

If defendant cannot give good account of his presence in a prosecution under this section, failure to give "good account" is not element of the crime and does not create presumption of knowledge of illegality of premises, which must be proved by the government as separate element of the crime, or presumption of any other element of the crime; rather provision for giving good account merely establishes affirmative defense to otherwise completed and adequately described crime of knowingly being present in illegal establishment. *Id.*

Defendant is entitled to present to jury explanations of such presence in addition to those given to police. *Id.*

Narcotics establishment

Illegal "narcotic establishment" is not merely place where addicts may be present, but is place where pushers, addicts and unaddicted neophytes can easily transact business, and thus effect of this section making it crime to knowingly be present in such establishment on status of being addicted to narcotics is merely incidental to section's major thrust against narcotics traffic, and elimination of such establishments was proper subject for Congressional action. *United States* v. *M. C. McClough et al.* (D.C. App. 1970, 263 A. 2d 48).

Presumptions

The amount of narcotics paraphernalia easily visible in apartment plus fresh needle marks on codefendant's arm supported the presumption that narcotic drugs were being administered and that defendant was knowingly present in establishment where narcotic drugs were admistered. *C. Jones* v. *United States* (D.C. App. 1970, 271 A. 2d 559).

Purpose

Purpose of Congress in enacting this section, making unlawful knowing presence in illegal narcotics, gambling, or liquor establishment, was to lead to eradication of such illegal establishments by making presence or employment therein crime. *United States* v. *M. C. McClough et al.* (D.C. App. 1970, 263 A. 2d 48).

Search and seizure

Defendant in prosecution for being present in illegal establishment, who had been arrested in basement in which narcotics paraphernalia was found and whose presence there was as a trespasser, did not have standing to challenge search and seizure of paraphernalia since possession of paraphernalia was not an element of offense charged, so as to estop government from denying its possessory interest. *F. L. Brooks* v. *United States* (D.C. App. 1970, 263 A. 2d 45).

Chapter 16.—GAME AND FISH LAWS

§ 22–1628. Commissioners' authority with respect to wild animals, fishing licenses, and migratory birds—Exception—"Wild Animals" defined.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(204) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to restricting, prohibiting, regulating, and controlling hunting and fishing and the taking, possession, and sale of wild animals, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 22–1629. Inspection of business or vocational establishments requiring a license or permit or any vehicle, boat, market box, market stall or cold storage plant, during business hours.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 22–1630. Seizure of hunting and fishing equipment by police officer—Return of seized property upon acquittal—Forfeiture of seized property upon conviction and sale at public auction—Disposal of proceeds of sale—Disposal of property not sold at auction—Payment of valid liens after sale of seized property.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(205) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) as provided in the last sentence of the subsection, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 22–1632. Delegation of functions by Secretary of Interior and Commissioners—Commissioners authorized to make regulations subject to approval of Secretary of Interior where they involve areas under his jurisdiction—Definition of "Commissioners" and "Secretary of Interior" for purposes of chapter.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 17.—HARBOR REGULATIONS

§ 22–1701. Harbor regulations—Authority vested in Commissioners to make—Federal approval if affecting navigable waters—Parks and waterfront—Penalty.

* * * * *

The commissioners of the District of Columbia are hereby vested with authority to make harbor regulations for the entire water-front of the city within the District of Columbia, to alter and amend the same from time to time as they may find necessary: *Provided,* That whenever these regulations affect navigable waters, channels, and anchorage areas or other interests of the United States, such regulations shall be subject to the approval of the Secretary of Transportation: *And provided further,* That

whenever said regulations affect the water-front within the District of Columbia under the jurisdiction of the Director of the National Park Service, or affect the interests and rights of the National Capital Planning Commission, such regulations shall be subject to prior approval of the respective agencies. (Mar. 3, 1901, 31 Stat. 1335, ch. 854, § 895; June 30, 1902, 32 Stat. 535, ch. 1329; Feb. 8, 1904, 33 Stat. 11, ch. 152, §§ 1, 2; June 6, 1924, ch. 270, § 9, as added July 19, 1952, 66 Stat. 790, ch. 949, § 1; June 15, 1934, 48 Stat. 963, ch. 536; Oct. 15, 1966, Pub. L. 89–670, § 6(g)(1), 80 Stat. 940.)

CODIFICATION

"Secretary of Transportation" was substituted in the fourth paragraph of this section for "Secretary of the Army", on the authority of section 6(g)(1) of the act of Oct. 15, 1966, Pub. L. 89–670, which transferred to and vested in the Secretary of Transportation, all functions, powers and duties of the Secretary of the Army relating to water vessel anchorages.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(206) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 22–1702. Throwing or depositing matter in Potomac River.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 22–1703. Deposits of deleterious matter in Rock Creek or Potomac River.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–1703a.

Chapter 18.—BURGLARY

Sec.
22–1801. Burglary—Penalties.

§ 22–1801. Burglary—Penalties.

(a) Whoever shall, either in the nighttime or in the daytime, break and enter, or enter without breaking, any dwelling, or room used as a sleeping apartment in any building, with intent to break and carry away any part thereof, or any fixture or other thing attached to or connected thereto or to commit any criminal offense, shall, if any person is in any part of such dwelling or sleeping apartment at the time of such breaking and entering, or entering without breaking, be guilty of burglary in the first degree. Burglary in the first degree shall be punished by imprisonment for not less than five years nor more than thirty years.

(b) Except as provided in subsection (a) of this section, whoever shall, either in the night or in the daytime, break and enter, or enter without breaking, any dwelling, bank, store, warehouse, shop, stable, or other building or any apartment or room, whether at the time occupied or not, or any steamboat, canalboat, vessel, or other watercraft, or railroad car or any yard where any lumber, coal, or other goods or chattels are deposited and kept for the purpose of trade, with intent to break and carry away any part thereof or any fixture or other thing attached to or connected with the same, or to commit any criminal offense, shall be guilty of burglary in the second degree. Burglary in the second degree shall be punished by imprisonment for not less than two years nor more than fifteen years. (Mar. 3, 1901, 31 Stat. 1323, ch. 854, § 823; Dec. 27, 1967, Pub. L. 90–226, § 602, title VI, 81 Stat. 736.)

AMENDMENT

1967—Section 602, Act Dec. 27, 1967, Pub. L. 90–226, amended section to read as above set out. For provisions prior to this amendment see main edition of the code.

SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967

Section 1101, Act Dec. 27, 1967, Pub. L. 90–226, provided:

Whoever, prior to the date of enactment of this Act, [Pub. L. 90–226] commits any act or engages in any conduct which constitutes an offense under provision of law amended by this Act, [Amendments of sections 4–140, 15–714, 15–716, 22–501, 22–703, 22–1513, 22–1801, 22–2001, 22–2901, 22–3105, 22–3201, 22–3202, 23–610, 23–901, 23–903, 24–301 and enactments of sections 4–140a, 4–150a and 22–1122, and amendments of 18 U.S.C. 4122, 5024 and 5025] shall be sentenced in accordance with the law in effect on the date he commits such acts or engages in such conduct.

SEPARABILITY OF PROVISIONS

Section 1102, Act Dec. 27, 1967, Pub. L. 90–226, Provided:

If any provision of or any amendment made by this Act [Pub. L. 90–226; for provisions and amendments made by this Act, see enumeration in note above under heading, "Sentence for offenses committed prior to Dec. 27, 1967."] or the application thereof to any person or circumstance is held invalid, the other provisions of or other amendments made by this Act and the application of such provisions and amendments to other persons or circumstances shall not be affected thereby.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–502, 23–546, 23–581.

NOTES TO DECISIONS

Arrest and search

Examination of the trunk of defendant's automobile did not constitute an illegal search by the police where it occurred contemporaneously with and at place of defendant's arrest under circumstances indicating convincingly defendant's participation in burglary. *R. Wright, Jr.* v. *United States* (1968, 404 F. 2d 1256, 131 U.S. App. D.C. 279).

Concurrent sentences

There was no resulting prejudice to a defendant in a case where concurrent sentences were imposed for crimes of carnal knowledge and housebreaking, as a result of error, if any, in failing to make out a prima facie case of housebreaking. *P. E. A. Duckett* v. *United States* (1969, 410 F. 2d 1004, 133 U.S. App. D.C. 305).

Defendant's absence during trial

Where record on appeal from convictions for housebreaking, arson, and malicious destruction of personal property failed to show that defendant's absence during trial, after trial had commenced in his presence, constituted deliberate failure to appear without reason that might bear on court's latitude to have continued trial, case would be remanded for development of such issue including circumstances in which defendant was taken into custody after trial. *M. Cureton* v. *United States* (1968, 396 F. 2d 671, 130 U.S. App. D.C. 22).

Elements of offense

Entry into closed store constitutes burglary if entry coincides, in point of time, with intent to steal once therein, even though intended theft was not consummated. *United States* v. *R. F. Fox* (1970, 433 F. 2d 1235, — U.S. App. D.C. —).

Evidence—Sufficiency

In absence of specific evidence as to the value of items taken, defendant's conviction for grand larceny would be reversed, but since trial judge gave lesser included offense charge as to petit larceny and there was sufficient evidence on which jury could find defendant guilty thereof, case would be remanded for resentencing. *United States* v. *E. E. Thweatt* (1970, 433 F. 2d 1226, — U.S. App. D.C.—).

Evidence, including evidence that, at time stores in neighborhood were being looted, the defendant was found by officer in store with broken window and that defendant dropped cartons of cigarettes, sustained burglary conviction. *United States* v. *R. F. Fox* (1970, 433 F. 2d 1235, — U.S. App. D.C. —).

Evidence, including testimony identifiying defendant as one of two men attempting to pry open window with crowbar, is sufficient to sustain convictions for attempted second-degree burglary, destroying property and attempted petit larceny. *H. Manning* v. *United States* (D.C. App. 1970, 270 A. 2d 504).

In this case the court held that the Government failed to sustain its burden of proving that the defendant was present in the house at time of entry, and that the evidence was insufficient to sustain conviction for first-degree burglary. *United States* v. *C. Hammonds* (1970, 425 F. 2d 597, — U.S. App. D.C. —).

In this case the court found that testimony concerning defendant's offer to sell the goods, leading the prospective buyers to where they were stored, and remaining with the goods during an interval when others had departed was sufficient evidence to allow a jury to find that defendant was in possession of recently stolen property and to infer larceny and housebreaking. *D. E. Garris, Jr.* v. *United States* (1969, 418 F. 2d 467, 135 U.S. App. D.C. 251).

In this case the evidence in prosecution of defendant for attempted burglary permitted inference of an intent to commit a crime to be made by the jury who was found in warehouse amongst scattered papers, opened desk drawers and office machinery which had been moved into hall. *P. E. Hebble* v. *United States* (D.C. App. 1969, 257 A. 2d 483).

In this case the evidence presented by the government in a prosecution for housebreaking and grand larceny was so compelling that, even if the police station confrontation between defendant and two prosecution witnesses was improper and in-court identification of defendant was not shown by clear and convincing evidence to have an independent source, error, if any, in the in-court identifications was harmless. *G. R. Taylor* v. *United States* (1969, 414 F. 2d 1142, 134 U.S. App. D.C. 246).

Evidence was sufficient in juvenile court proceeding to support finding that the minor was guilty of housebreaking and petty larceny. *In the Matter of N. M. Ellis* (D.C. App. 1969, 253 A. 2d 789; remanded 429 F. 2d 214, — U.S. App. D.C. —).

Defendant's responsibility for housebreaking was established by being with those who broke store window coupled with his flight with stolen goods. *Id.*

Evidence that tenant of apartment heard what sounded like someone attempting to enter vacant apartment and that defendant and companion were seen leaving building and fled when pursued by officer was sufficient to sustain conviction of attempted housebreaking. *T. H. Adams* v. *United States* (D.C. App. 1968, 245 A. 2d 640).

Evidence of eyewitness, corroborated by physical details otherwise in evidence, supported verdicts finding defendants guilty of first-degree murder and housebreaking. *R. T. Brown, J. D. Irby and R. L. Jones* v. *United States* (1967, 375 F. 2d 310, 126 U.S. App. D.C. 134).

Examination of witnesses

In prosecution for housebreaking and grand larceny, the court's questioning of defense witnesses on certain aspects of testimony which they had given in support of alibi claim in order to obtain much needed clarification of their testimony rather than challenges thereto did not amount of advocacy against alibi theory in presence of jury, and in any event was not prejudicial where it was not significantly different in nature from court's questioning of a vital government witness. *United States* v. *H. W. Barbour* (1969, 420 F. 2d 1319, 137 U.S. App. D.C. 116).

Impeachment

Cross-examination of defendant during which the prosecution was permitted to develop that for some time prior to date of offense defendant had been absent from his military post without leave was improper, and the prejudice was magnified by the erroneous admission of government's rebuttal evidence as to defendant's absence from military post. *United States* v. *W. A. Shumate et ano.* (1970, 429 F. 2d 777, — U.S. App. D.C. —).

In this case, the Court held that, inasmuch as the defendant's prior convictions of unauthorized use of vehicle and petit larceny were introduced in evidence on his own direct examination in effort to support contention that he was framed with respect to grand larceny charge by one of government's witnesses, he could not successfully complain of alleged error in permitting him to be impeached by prior convictions, notwithstanding decisions stating that the offense of taking property without right does not bear on credibility. *United States* v. *G. W. Lucas* (1970, 426 F. 2d 664, — U.S. App. D.C. —).

In this case the court held that under the circumstances the defendant, who was convicted of housebreaking and grand larceny, was entitled to nonjury hearing to determine whether defendant would be allowed to take stand in front of jury without prosecution introducing evidence of defendant's prior convictions. *United States* v. *J. Coleman* (1969, 420 F. 2d 1313, 137 U.S. App. D.C. 110).

Inconsistent verdict

Verdicts acquitting defendant of larceny while convicting him of burglary are not fatally inconsistent in prosecution in which officer testified that he found defendant in looted store holding cigarettes. *United States* v. *R. F. Fox* (1970, 433 F. 2d 1235, — U.S. App. D.C. —).

The trial court could have found defendant, who was carrying goods stolen from an apartment building, which he later abandoned when he attempted to flee, guilty of both attempted burglary and petit larceny charges on inference of guilt raised by defendant's unexplained possession of recently stolen property or even on the basis of this inference the trier of the facts could have had a reasonable doubt that defendant had necessary criminal intent upon entering apartment building to be convicted of attempted burglary, and thus verdicts of acquittal on attempted burglary charge and guilty on petit larceny charge were not necessarily inconsistent or irreconcilable. *H. Barnes* v. *United States* (D.C. App. 1969, 254 A. 2d 724).

Evidence was sufficient to sustain petit larceny conviction. *Id.*

Indictment

A failure to allege an unlawful entry in count charging second-degree burglary amounted to no more than harmless error *United States* v. *J. Jeffries et al.* (1968, 45 F.R.D. 110).

Since no indictment for a violation of riot statute had been returned charging engaging in riot alone but rather always that count was coupled with counts charging burglary and grand or petty larceny, the grand jury considered engaging in a riot in violation of statute in conjunction with separate but immediately related criminal conduct and there was no loose, unguided approach to indictments returned by grand jury under riot statute that would deprive defendants of their constitutional rights. *Id.*

Information—Amendment

Where amendment of information charging attempted second-degree burglary, destroying private property, and petit larceny to reflect that property in question belonged to corporation in care and custody of individual, as opposed to individual alone as charged in original information, conformed to testimony at trial and no prejudice was occasioned by the defense, permitting the amendment was not error. *J. L. King* v. *United States* (D.C. App. 1970, 271 A. 2d 556).

Instructions

In this case, since the jury had convicted defendant of more serious crime of attempted burglary, any error in instruction on lesser included offense of unlawful entry was not demonstrated to be prejudicial. *P. E. Hebble* v. *United States* (D.C. App. 1969, 257 A. 2d 843).

Charge to jury fairly covered alibi defense of defendant, who was charged on counts of housebreaking and grand larceny, and also adequately indicated substance of defendant's position that he had no obligation to show that another was actually the transgressor. *R. Wright, Jr.* v. *United States* (1968, 404 F. 2d 1256, 131 U.S. App. D.C. 279).

Where defense counsel, in response to inquiry by federal District Court in prosecution for housebreaking, expressed satisfaction with instructions given, and defendant was convicted on strong evidence, defendant could not require Court of Appeals to exercise discretion available under provision of Federal Rule of Criminal Procedure that plain errors or defects affecting substantial rights may be noticed though they were not brought to attention of court. *H. Manning* v. *United States* (1966, 371 F. 2d 353, 125 U.S. App. D.C. 256).

Intent

Crucial element of offense of second-degree burglary is the specific intent which impelled entry and not the lawful or unlawful manner of entry. *United States* v. *J. Jeffries et al.* (1968, 45 F.R.D. 110).

Unlawful entry bears heavily on question of defendant's intent to commit second-degree burglary but it is not a prerequisite to the establishment of such an intent. *Id.*

Lesser included offense

"Criminal offense", within burglary statute prohibiting entry with intent to commit any criminal offense, includes petit larceny. *United States* v. *R. F. Fox* (1970, 433 F. 2d 1235, — U.S. App. D.C. —).

Except for the requirement of intent to commit crime, unlawful entry is substantially identical to and hence lesser included offense of burglary in second degree. *P. E. Hebble* v. *United States* (D.C. App. 1969, 257 A. 2d 483).

One man showup

Where an intruder broke into the apartment of two women, and shortly thereafter was arrested as a suspect, and about 30 minutes after the attack the women were asked to come down to the street in front of their apartment and view defendant who was the sole occupant of patrol wagon, use of "one-man showup" did not deny defendant due process of law. *G. W. Bates* v. *United States* (1968, 405 F. 2d 1104, 132 U.S. App. D.C. 36).

Partial acquittal

Although the defendant was acquitted on a charge of burglarizing a liquor store in a riot district, did not of itself establish that jury accepted defendant's testimony that he did not enter store, thereby making it erroneous for trial court to interpret antiriot statute as permitting jury to find defendant guilty of engaging in a riot, since, absent an instruction to the effect that jury should acquit defendant of riot count if it accepted his testimony as true, it was impossible to make any assumption as to precisely how jury viewed facts. *United States* v. *C. Mathews* (1969, 419 F. 2d 1177, 136 U.S. App. D.C. 196).

Probable cause

In this case, since the police officers were investigating reported burglary, and defendants were seen carrying coffee table, and their distinctive clothing matched clothing of men seen in vicinity of burglary, and there was a furtive disposal of instrumentalities of burglary by one defendant, and other defendant attempted to get his gun out of pocket as officers approached, there was probable cause for arrest of defendants and for their search and search of their automobile. *United States* v. *R. Cunningham et ano.* (1970, 424 F. 2d 942, — U.S. App. D.C. —).

The record in this case which discloses that one of two boys apprehended at the scene of housebreaking accompanied officers to apartment and identified the defendant as person who had entered store across street from apartment disclosed so small a probability that probable cause for arrest was lacking that unraised issue of probable cause would not be considered as plain error. *J. Washington* v. *United States* (1969, 414 F. 2d 1119, 134 U.S. App. D.C. 223).

Prosecutor's remarks to jury

Record disclosed uncontested facts so confirming the defendant's guilt of second-degree burglary and petit larceny consisting in theft of money from coin-operated laundry machines located in locked basement room of an apartment building that any impropriety in the prosecuting attorney's argument must be classed as harmless error. *United States* v. *R. K. Jones* (1970, 433 F. 2d 1107, — U.S. App. D.C. —).

In this case, the court held that the statement of prosecuting attorney that if jury believed testimony of defendants, who were charged with burglary II and petit larceny, they must conclude that police officers were "out-and-out liars," was not so prejudicial as to require reversal. *United States* v. *Stevenson et ano.* (1970, 424 F. 2d 923, — U.S. App. D.C. —).

The use by prosecuting attorney of phrase "lucky enough to catch somebody right in the act," and to "catch them red-handed" was not so prejudicial as to constitute plain error. *Id.*

Review—Remand

In a case in which guilty verdict was ambiguous for failure to state whether it referred to offense of housebreaking or to offense of unlawful entry, the court held that remand for new trial was appropriate remedy. *K. F. Glenn* v. *United States* (1969, 420 F. 2d 1323, 137 U.S. App. D.C. 120).

Sentences

Rule of lenity is to be applied, and concurrent sentences imposed for destruction of property and attempted second-degree burglary, since in this case both offenses involved single course if conduct, i.e., prying of window. *H. Manning* v. *United States* (D.C. App. 1970, 270 A. 2d 504).

Consecutive sentences could properly be imposed for attempted second-degree burglary and attempted petit larceny, since it is apparent from facts of case, including use of panel truck, that defendant intended to invade two distinct societal interests. *Id.*

Statutory provision for two-year mandatory minimum sentence for burglary do not operate to prevent prosecution and sentencing for lesser misdemeanors of attempted burglary in second degree, destroying private property, and petit larceny, for which offenses the defendant was actually sentenced for one-half year more than two-year felony minimum. *J. L. King* v. *United States* (D.C. App. 1970, 271 A. 2d 556).

Under the facts of this case where defendant's true crime was burglary in the second degree, a felony carrying a mandatory minimum sentence of two years, and prosecution reduced felony to the three separate misdemeanors of attempted burglary in second degree, destroying private property, and petit larceny, trial judge did not abuse discretion in imposing two consecutive one-year sentences and one concurrent one-year sentence following defendant's conviction on all three separate misdemeanors. *R. M. Weeks* v. *United States* (D.C. App. 1969, 252 A. 2d 907).

Severance of counts

It was within trial court's discretion to grant government's motion for severance of counts in prosecution for grand larceny and housebreaking where government made at least a threshold showing of prejudice, in that, unexpectedly, the necessary witnesses as to two transactions could not be available at the same time, and where there was a lack of any specific prejudice claimed by defendant. *D. E. Garris, Jr.* v. *United States* (1969, 418 F. 2d 467, 135 U.S. App. D.C. 251).

Verdict

Where defendant was charged with housebreaking and jury was instructed on elements of both housebreaking and on lesser included offense of unlawful entry and returned one word verdict of "guilty" without specifying to which offense this finding related, the verdict is ambiguous and conviction for housebreaking cannot be founded upon it. *K. F. Glenn* v. *nUited States* (1969, 420 F. 2d 1323, 137 U.S. App. D.C. 120).

Chapter 20.—OBSCENITY

Sec.
22–2001. Certain obscene activities and conduct declared unlawful—Definitions—Penalties—Affirmative defenses—Exception.

§ 22–2001. Certain obscene activities and conduct declared unlawful—Definitions—Penalties—Affirmative defenses—Exception.

(a)(1) It shall be unlawful in the District of Columbia for a person knowingly—

(A) to sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute, or provide any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;

(B) to present, direct, act in, or otherwise participate in the preparation or presentation of, any obscene, indecent, or filthy play, dance, motion picture, or other performance;

(C) to pose for, model for, print, record, compose, edit, write, publish, or otherwise participate in preparing for publication, exhibition, or sale, any obscene, indecent, or filthy writing, picture, sound recording, or other article or representation;

(D) to sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute or provide any article, thing, or device which is intended for or represented as being for indecent or immoral use;

(E) to create, buy, procure, or possess any matter described in the preceding subparagraphs of this paragraph with intent to disseminate such matter in violation of this subsection;

(F) to advertise or otherwise promote the sale of any matter described in the preceding subparagraphs of this paragraph; or

(G) to advertise or otherwise promote the sale of material represented or held out by such person to be obscene.

(2)(A) For purposes of subparagraph (E) of paragraph (1) of this subsection, the creation, purchase, procurement, or possession of a mold, engraved plate, or other embodiment of obscenity specially adapted for reproducing multiple copies or the possession of more than three copies, of obscene, indecent, or filthy material shall be prima facie evidence of an intent to disseminate such material in violation of this subsection.

(B) For purposes of paragraph (1) of this subsection, the term "knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any article, thing, device, performance, or representation described in paragraph (1) of this subsection which is reasonably susceptible of examination.

(3) When any person is convicted of a violation of this subsection, the court in its judgment of conviction may, in addition to the penalty prescribed, order the confiscation and disposal of any materials described in paragraph (1), which were named in the charge against such person and which were found in the possession or under the control of such person at the time of his arrest.

(b)(1) It shall be unlawful in the District of Columbia for any person knowingly—

(A) to sell, deliver, distribute, or provide, or offer or agree to sell, deliver, distribute, or provide to a minor—

(i) any picture, photograph, drawing, sculpture, motion picture film, or similar visual representation or image of a person or portion of the human body, which depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors; or

(ii) any book, magazine, or other printed matter however reproduced or sound recording, which depicts nudity, sexual conduct, or sado-masochistic abuse or which contains explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors; or

(B) to exhibit to a minor, or to sell or provide to a minor an admission ticket to, or pass to, or to admit a minor to, premises whereon there is exhibited, a motion picture, show, or other presentation which, in whole or in part, depicts nudity, sexual conduct, or sado-masochistic abuse and which taken as a whole is patently offensive because it affronts prevailing standards in the adult community as a whole with respect to what is suitable material for minors.

(2) For purposes of paragraph (1) of this subsection:

(A) The term "minor" means any person under the age of seventeen years.

(B) The term "nudity" includes the showing of the human male or female genitals, pubic area or buttocks with less than a full opaque covering, or the showing of the female breast with less than a full opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state;

(C) The term "sexual conduct" includes acts of sodomy, masturbation, homosexuality, sexual intercourse, or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks, or, if such person be a female, breast.

(D) The term "sexual excitement" includes the condition of human male or female genitals when in a state of sexual stimulation or arousal.

(E) The term "sado-masochistic abuse" includes flagellation or torture by or upon a person clad in undergarments or a mask or bizarre costume, or the condition of being fettered, bound, or otherwise physically restrained on the part of one so clothed.

(F) The term "knowingly" means having a general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry or both of—

(i) the character and content of any material described in paragraph (1) of this subsection which is reasonably susceptible of examination by the defendant; and

(ii) the age of the minor.

(c) It shall be an affirmative defense to a charge of violating subsection (a) or (b) of this section that the dissemination was to institutions or individuals having scientific, educational, or other special justification for possession of such material.

(d) Nothing in this section shall apply to a licensee under the Communications Act of 1934 while engaged in activities regulated pursuant to such Act.

(e) A person convicted of violating subsection (a) or (b) of this section shall for the first offense be fined not more than $3,000 or imprisoned not more than one year, or both. A person convicted of a second or subsequent offense under subsection (a) or (b) of this section shall be fined not less than $1,000 nor more than $5,000 or imprisoned not less than six months or more than three years, or both. (Mar. 3, 1901, 31 Stat. 1332, ch. 854, § 872; Dec. 27, 1967, Pub. L. 90–226, § 606, title VI, 81 Stat. 738.)

REFERENCE IN TEXT

The Communication Act of 1934, referred to in subsection (d) is set out in Chapter 5 of title 47, U.S. Code.

AMENDMENT

1967—Section 606, Act Dec. 27, 1967, Pub. L. 90–226, amended section to read as above set out. For provisions of section prior to this amendment see main edition of the code.

SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967

Section 1101, Act Dec. 27, 1967, Pub. L. 90–226, provided:

Whoever, prior to the date of enactment of this Act [Pub. L. 90–226], commits any act or engages in any conduct which constitutes an offense under provision of law amended by this Act [Amendments of sections 4–140, 15–714, 15–716, 22–501, 22–703, 22–1513, 22–1801, 22–2001, 22–2901, 22–3105, 22–3201, 22–3202, 23–610, 23–901, 23–903, 24–301 and enactments of sections 4–140a, 4–150a and 22–1122, and amendments of 18 U.S.C. 4122, 5024 and 5025], shall be sentenced in accordance with the law in effect on the date he commits such acts or engages in such conduct.

SEPARABILITY OF PROVISIONS

Section 1102, Act Dec. 27, 1967, Pub. L. 90–226, provided:

If any provision of or any amendment made by this Act [Pub. L. 90–226; for provisions and amendments made by this Act, see enumeration in note above under heading, "Sentence for offenses committed prior to Dec. 27, 1967."] or the application thereof to any person or circumstance is held invalid, the other provisions of or other amendments made by this Act and the application of such provisions and amendments to other persons or circumstances shall not be affected thereby.

CROSS REFERENCES

For provisions relating to obscene or harassing telephone calls, see 47 U.S.C. § 223.

For other provisions dealing with lewd, indecent or obscene acts, see secs. 22–1112, 22–3501.

NOTES TO DECISIONS

Constitutionality

This section is not so unconstitutionally vague as to deprive a defendant of equal protection or due process. *United States* v. *T. Gower* (1970, 316 F. Supp. 1390).

Construction

This section making it unlawful for a person knowingly to present, direct, act in, or otherwise participate in preparation or presentation of obscene, indecent, or filthy play, dance, motion picture or other performance requires no more than that appellants had sufficient knowledge of performance such that they should have suspected its impropriety and inspected or inquired as to its character and content. *R. Morris and B. C. Carroll, etc.* v. *United States* (D.C. App. 1969, 259 A. 2d 337).

Congress did not intend that the question of obscenity of the performance should depend upon the opinion or belief or the person who, with knowledge or notice of his acts, assumed the responsibility for putting on the performance. *Id.*

This section allows appellants to remain ignorant of illegality of performance only at their peril, once they know or have reason to know they might be violating statute. *Id.*

Evidence—Admissibility

Since this section required proof that defendants had knowledge of character and contents of material, which constituted sufficient proof of scienter trial judge properly excluded testimony that defendant had received advice of competent counsel that material could be legally sold. *V. W. Huffman and D. E. Pryba* v. *United States* (D.C. App. 1969, 259 A. 2d 342).

—— of community standards

Where there is ruling of obscenity per se, as in this case, defense is entitled to offer evidence of national community standards to prove that material or performance is not obscene; such proof, if established, would be good defense. *R. Morris and B. C. Carroll, etc.* v. *United States* (D.C. App. 1969, 259 A. 2d 337).

In this case the exhibits which consisted of magazines containing photographs of nudes and, where certain of them had been declared nonobscene in per curiam opinions by United States Supreme Court were not admissible as proof of contemporary community standards, even if they were sold all over United States, where tendered exhibits were not comparable to material possessed and sold by defendants. *V. W. Huffman and D. E. Pryba* v. *United States* (D.C. App. 1969, 259 A. 2d 342).

—— Sufficiency

In this case the evidence in prosecution for knowingly selling certain obscene, indecent and filthy articles was sufficient for jury to properly conclude that defendants were aware of content and character of materials. *V. W. Huffman and D. E. Pryba* v. *United States* (D.C. App. 1969, 259 A. 2d 342).

Government's burden of proof

In obscenity case involving question of whether a local burlesque show was obscene, Government was required to offer competent evidence to prove relevant community standards prevailing in nation generally, and by failing to do so, Government failed to establish an essential element of the crime charged. *L. M. Hudson et al.* v. *United States* (D.C. App. 1967, 234 A. 2d 903).

Hard-core pornography

Photographs and films depicting nude males and females engaged in sexual intercourse, fellatio, cunnilingus, and masturbation constitute hard-core pornography and as such the government is not required to produce expert testimony about appeal to prurient interest and contemporary community standards, in prosecution for violation of this section making it crime to knowingly sell or possess with intent to sell obscene material. *United States* v. *T. Gower* (1970, 316 F. Supp. 1390).

Management's burden

In this case the court held that the trial judge could infer that defendant, who was manager of theater, knew or had reasonable opportunity to know character and content of performer's act, and had burden under this section, of ascertaining whether performer's performance might have been obscene, and neglect to do so was not adequate defense. *R. Morris and B. C. Carroll etc.* v. *United States* (D.C. App. 1969, 259 A. 2d 337).

"Obscene" defined

As used in statutory language, the word "obscene" is intended to have a meaning that varies from time to time as general notions of decency in attire and conduct of exhibitions for public entertainment tend to change. *L. M. Hudson et al.* v. *United States* (D.C. App. 1967, 234 A. 2d 903).

In the District of Columbia, community standards in obscenity cases shall be determined by a reference to contemporary community standards in the nation as a whole. *Id.*

Obscene per se

In this case the record established and the court held that reasonable men could only conclude that performer's

acts simulated fellatio and intentional exposure of the vaginal area, and which was performed on stage and runway while lying on stage and repeating act to other side of stage while at same time yelling "Let's see it all" was obscene per se. *R. Morris and B. C. Carroll etc.* v. *United States* (D.C. App. 1969, 259 A. 2d 337).

Review of evidence de novo

In this case the District of Columbia Court of Appeals reviewed the evidence de novo in a prosecution for knowingly presenting, directing and participating in presentation of obscene, indecent and filthy performance. *R. Morris and B. C. Carroll etc.* v. *United States* (D.C. App. 1969, 259 A. 2d 337).

Scienter

In this case the performer knew or should have known that her performance might violate this section since she was the performer, and had enough knowledge about the performance to properly hold her responsible for further inquiry or inspection into act's character and content, and that was all that was needed to satisfy requirement of scienter under this section *R. Morris and B. C. Carroll etc.* v. *United States* (D.C. App. 1969, 259 A. 2d 337).

This section required proof that defendants had knowledge of character and content of the alleged obscene material, and that constituted sufficient proof of scienter; if defendants knew what they were doing, their personal belief that they were not violating the law was no defense. *V. W. Huffman and D. E. Pryba* v. *United States* (D.C. App. 1969, 259 A. 2d 342).

Search and seizure

Since undercover police officer asked defendant bookstore owner about purchasing films similar to ones he had already purchased and policeman accompanied bookstore owner to his automobile where defendant opened trunk and selected films from bag in trunk, there was no need for prior adversary hearing to determine obscenity before seizing films pursuant to a search warrant. *United States* v. *T. Gower* (1970, 316 F. Supp. 1390).

The fact that defendant bookstore owner kept photographs and films under the counter or in trunk of his automobile could properly be considered in determining whether there must be an adversary hearing prior to issuance of search warrant authorizing seizure of the alleged obscene materials. *Id.*

Chapter 21.—KIDNAPING

§ 22–2101. Definition and penalty—Conspiracy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–502, 23–546.

NOTES TO DECISIONS

Conduct of counsel

In this case, the court held that the conduct of prosecution in preliminary hearing, wherein, after testimony of complaining witness had been taken, government moved to dismiss when defendant sought to test credibility of complainant by calling her mother, and magistrate granted motion, did not warrant dismissal of kidnaping indictment or, in the alternative, suppression of complainant's testimony. *United States* v. *D. Regisser* (1970, 309 F. Supp. 879).

Chapter 22.—LARCENY—RECEIVING STOLEN GOODS

§ 22–2201. Grand larceny.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–546, 23–581.

NOTES TO DECISIONS

Arrest and search

Examination of the trunk of defendant's automobile did not constitute an illegal search by the police where it occurred contemporaneously with and at place of defendant's arrest under circumstances indicating convincingly defendant's participation in burglary. *R. Wright, Jr.* v. *United States* (1968, 404 F. 2d 1256, 131 U.S. App. D.C. 279).

Evidence—Sufficiency

Conviction of either grand larceny of automobile or unauthorized use of automobile entails evidence having enough probative power to convince the jury beyond reasonable doubt of every essential element, and also on identity of the accused as participant. *United States* v. *A. T. Johnson* (1970, 433 F. 2d 1160, — U.S. App. D.C. —).

Evidence, in prosecution for grand larceny of automobile, unauthorized use of such automobile, and for grand larceny of engine from another automobile, warranted the finding that the character of possession of stolen property, united with other evidence in case, would authorize inference attributing guilt to defendant. *Id.*

In prosecution for grand larceny, government had to introduce probative evidence of each and every element of crime charged, including value of property which was taken and failure to offer such proof would be fatal to government's case. *United States* v. *E. E. Thweatt* (1970, 433 F. 2d 1226, — U.S. App. D.C. —).

When there is a possibility of convicting the defendant of either grand or petit larceny, offenses which carry significantly different penalties and which are distinguished solely by value of property taken, it is essential that government introduce evidence of that value in order to give jury a firm basis upon which it can render a verdict. *Id.*

In absence of specific evidence as to the value of items taken, defendant's conviction for grand larceny would be reversed, but since the judge gave lesser included offense charge as to petit larceny and there was sufficient evidence on which jury could find defendant guilty thereof, case would be remanded for resentencing. *Id.*

In this case the evidence presented by the government in a prosecution for housebreaking and grand larceny was so compelling that, even if the police station confrontation between defendant and two prosecution witnesses, was improper and in-court identification of defendant was not shown by clear and convincing evidence to have an independent source, error, if any, in the in-court identifications was harmless. *G. R. Taylor* v. *United States* (1969, 414 F. 2d 1142, 134 U.S. App. D.C. 246).

In this case the court found that testimony concerning defendant's offer to sell the goods, leading the prospective buyers to where they were stored, and remaining with the goods during an interval when others had departed was sufficient evidence to allow a jury to find that defendant was in possession of recently stolen property and to infer larceny and housebreaking. *D. E. Garris, Jr.* v. *United States* (1969, 418 F. 2d 467, 135 U.S. App. D.C. 251).

Examination of witnesses

In prosecution for housebreaking and grand larceny, the court's questioning of defense witnesses on certain aspects of testimony which they had given in support of alibi claim in order to obtain much needed clarification of their testimony rather than challenges thereto did not amount to advocacy against alibi theory in presence of jury, and in any event was not prejudicial where it was not significantly different in nature from court's questioning of a vital government witness. *United States* v. *H. W. Barbour* (1969, 420 F. 2d 1319, 137 U.S. App. D.C. 116).

Impeachment

In this case, the Court held that, inasmuch as the defendant's prior convictions of unauthorized use of vehicle and petit larceny were introduced in evidence on his own direct examination in effort to support contention that he was framed with respect to grand larceny charge by one of government's witnesses, he could not successfully complain of alleged error in permitting him to be impeached by prior convictions, notwithstanding decisions stating that the offense of taking property without right does not bear on credibility. *United States* v. *G. A. Lucas* (1970, 426 F. 2d 664, — U.S. App. D.C. —).

In this case the court held that under the circumstances the defendant, who was convicted of housebreaking and grand larceny, was entitled to nonjury hearing to determine whether defendant would be allowed to take stand in front of jury without prosecution introducing evidence of defendant's prior convictions. *United States* v. *J. Coleman* (1969, 420 F. 2d 1313, 137 U.S. App. D.C. 110).

Included offense

Larceny is a necessarily included offense of robbery. *W. Walker, Jr.* v. *United States* (1969, 418 F. 2d 1116, 135 U.S. App. D.C. 280).

Inconsistent verdict

Verdict whereby defendant was convicted of and codefendant was acquitted of grand larceny of automobile, unauthorized use of the automobile, and grand larceny of engine from another automobile, was not inconsistent since the jury rather than determining that codefendant lacked possession of stolen property, could have derived doubt as to whether codefendant collaborated in commission of charged offenses. *United States* v. *A. T. Johnson* (1970, 433 F. 2d 1160, — U.S. App. D.C. —).

Instructions

Fact that the jury was instructed, in prosecution for grand larceny of automobile and of automobile engine and for unauthorized use of motor vehicle, that if prerequisite to inference of guilt for possession of recently stolen property exists beyond reasonable doubt it could be inferred that defendant was guilty of one or both of such offenses, but was not instructed that inference permissible was that defendant was person who committed such offense if government proved all of their essential elements beyond reasonable doubt, did not warrant reversal of conviction since, in other portions of charge, instruction was given on presumption of innocence and government's burden of proof beyond reasonable doubt. *United States* v. *A. T. Johnson* (1970, 433 F. 2d 1160, — U.S. App. D.C. —).

Charge to jury fairly covered alibi defense of defendant, who was charged on counts of housebreaking and grand larceny, and also adequately indicated substance of defendant's position that he had no obligation to show that another was actually the transgressor. *R. Wright, Jr.* v. *United States* (1968, 404 F. 2d 1256, 131 U.S. App. D.C. 279).

Prejudicial error

In this case, assuming that failure of the trial judge to inform defendant's counsel of larceny charge before he summed up constituted error, where defendant was indicted for robbery and assault with a deadly weapon. however, that failure lacked the prejudice necessary to constitute reversible error where, inter alia, defendant's admission in open court established his intention and his attempt to trick complainants, so that damage was done when defendant took the stand it was not likely that a variation in summation would have changed the verdict. *W. Walker, Jr.* v. *United States* (1969, 418 F. 2d 1116, 135 U.S. App. D.C. 280).

Probable cause

In this case, since the police officers were investigating reported burglary, and defendants were seen carrying coffee table, and their distinctive clothing matched clothing of men seen in vicinity of burglary, and there was a furtive disposal of instrumentalities of burglary by one defendant, and other defendant attempted to get his gun out of pocket as officers approached, there was probable cause for arrest of defendants and for their search and search of their automobile. *United States* v. *R. Cunningham et ano.* (1970, 424 F. 2d 942, — U.S. App. D.C. —).

Sentences

The single taking of an automobile can constitute both offense of grand larceny of automobile and offense of unauthorized use of automobile, and can authorize separate though concurrent sentences under each. *United States* v. *A. T. Johnson* (1970, 433 F. 2d 1160, — U.S. App. D.C. —).

Severance of counts

It was within trial court's discretion to grant government's motion for severance of counts in prosecution for grand larceny and housebreaking where government made at least a threshold showing of prejudice, in that, unexpectedly, the necessary witnesses as to two transactions could not be available at the same time, and where there was a lack of any specific prejudice claimed by defendant. *D. E. Garris, Jr.* v. *United States* (1969, 418 F. 2d 467, 135 U.S. App. D.C. 251)

Withholding of evidence by government

Record in proceeding for habeas corpus or new trial alleging that evidence in government's possession was not disclosed at petitioner's trial on charge of grand larceny by trick established that government was not negligent in not disclosing evidence consisting of check drawn by bank to replenish its supply of $1,000 bills and statement of bank officer relating to alleged exchange of $1,000 bills for $20 bills, but rather established that such information was not sufficiently probative or material to require disclosure to defense. *M. M. Levin* v. *N. deB. Katzenbach* (1966, 262 F. Supp. 951).

Record in proceeding for habeas corpus or new trial alleging that evidence in government's possession was not disclosed at petitioner's trial on charge of grand larceny by trick failed to establish that jury might have been led to entertain reasonable doubt as to petitioner's guilt had defense been able to show that bank officers did not remember changing $1,000 bills, which were subject of alleged larceny, into smaller ones. *Id.*

§ 22–2202. Petit larceny—Order of restitution.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–581.

NOTES TO DECISIONS

Applicability of Miranda rule

Principles of Miranda did not apply to statements made by defendant, when he was stopped and asked if automobile was his, and if the property taken from the automobile belonged to him, and asked the license number of the automobile, where appellant was detained only because officer felt his conduct required investigation and defendant was questioned briefly and his answers were uncoerced and voluntary. This does not constitute custodial interrogation. *T. A. Green* v. *United States* (D.C. App. 1967, 234 A. 2d 177).

Cause for arrest

Where a police officer had a conversation with the victim of an assault and petit larceny and proceeded in patrol car in search of the assailants, and the stolen articles were in plain view of officer in defendant's hand and at his feet in the gutter, an arrest was authorized when the officer saw the stolen articles. *R. L. Thompkins* v. *United States* (D.C. App. 1969, 251 A. 2d 636).

Where in making an initial stop of the defendant the officer was engaged in routine on-the-street investigation in nearby area of a crime minutes after it occurred in an early hour of the morning in his effort to find perpetrator while the trail was still warm, and under these circumstances the initial stop of defendant was neither an arrest nor an arbitrary detention, but arrest occurred after officer saw the articles which fit description of stolen property, which gave sufficient cause to arrest, and seizure was not invalid. *Id.*

Consecutive sentences for two separate offenses

The distinctions that assault and petit larceny are separate and distinct offenses requiring different elements of proof, and that one is a crime of general intent against the person, and the other a crime of specific intent against property, are no longer conclusive in determining the legality of consecutive sentences for two crimes committed in a single course of conduct. *G. Mahoney* v. *United States* (D.C. App. 1968, 243 A. 2d 684).

The compelling reasons which call for the application of the rule of lenity are absent in this case, and there is no substantial doubt Congress would have intended, in the discretion of the court, that consecutive punishment be imposed for historically separate offenses, against different societal interests, for which it has provided separate deterrents. *Id.*

Criminal intent

The fact that defendant placed meat in shopping bag in self-service store did not provide valid reason for trial court in prosecution for petit larceny to infer a criminal intent or a possession clearly adverse to interests of store, where an attempt by defendant to conceal the meat was not proven. *S. A Durphy* v. *United States* (D.C. App. 1967, 235 A. 2d 326).

Effective assistance of counsel

The court held that, record on appeal from conviction for petit larceny and assault did not establish denial of effective assistance of counsel *J. Bell, Jr.* v. *United States* (D.C. App. 1970, 260 A. 2d 690).

Establishment of corpus delecti

To establish the corpus delicti of the crime of larceny, the Government must prove that the property was lost by the owner as a result of a felonious taking; the "corpus delicti" consists of proof that the crime charged was committed by someone. *T. Williams and B. L. Short* v. *United States* (D.C. App. 1969, 254 A. 2d 722).

Evidence of prior conviction

Permitting impeachment by prior petit larceny conviction relating to defendant's credibility was a proper exercise of judicial discretion in subsequent petit larceny prosecution. *A. E. Bullock* v. *United States* (D.C. App. 1968, 243 A. 2d 677).

Allowing government to question defendant accused of petit larceny as to his former larceny convictions did not constitute an abuse of discretion in view of fact that trial judge fully instructed jury that they were to consider such evidence only in connection with their evaluation of credence to be given defendant's testimony and that prior convictions were in no way evidence of defendant's guilt of present charge. *F. Ginyard* v. *United States* (D.C. App. 1967, 232 A. 2d 590).

Evidence—Sufficiency

The lack of evidence that automobile was parked within the District of Columbia when the theft of license tags requires reversal of conviction for petit larceny for theft of license tags. *United States* v. *C. R. Howard* (1970, 433 F. 2d 505, — U.S. App. D.C. —).

In this case, the court held that testimony as to ownership of damaged vending machine, purportedly based on witness' own knowledge, was not hearsay and was sufficient to prove ownership as alleged in information charging malicious injuring of property and attempted petit larceny. *L. Killens* v. *United States* (D.C. App. 1970, 263 A. 2d 44).

Evidence was not sufficient to sustain a conviction for aiding and abetting petit larceny on a showing that at time officer observed suspected criminal activity defendant was standing near the right side of automobile at a point somewhere between automobile, which contained wine and beer allegedly stolen from store, and the store. *T. Williams and B. L. Short* v. *United States* (D.C. App. 1969, 254 A. 2d 722).

Evidence did not sustain conviction of petit larceny of wine and beer in violation of District Code. *Id.*

Evidence was sufficient in juvenile court proceeding to suppport finding that the minor was guilty of housebreaking and petty larceny. *In the Matter of N. M. Ellis* (D.C. App. 1969, 253 A. 2d 789; remanded 429 F. 2d 214, — U.S. App. D.C. —).

Defendant's responsibility for housebreaking was established by being with those who broke store window coupled with his flight with stolen goods. *Id.*

Evidence was sufficient to sustained conviction for petit larceny. *L. L. Cooper* v. *United States* (D.C. App. 1969, 248 A. 2d 826).

Evidence was sufficient to sustain conviction of petit larceny allegedly committed by obtaining money from complaining witness by trick through procedure variously known as "flimflam," "faith and trust," or "confidence game," whereby defendant and another, ostensibly strangers to each other, persuaded victim to turn over to one of them a sum of money to demonstrated victim's trustworthiness as a prerequisite to obtaining easy money, even though defendant's partner was never apprehended. *J. J. Few* v. *United States* (D.C. App. 1968, 248 A. 2d 125).

Evidence that fingerprints of defendant appeared on glass surface, which had once been outside surface of drugstore entrance was insufficient to sustain conviction of attempted housebreaking, destroying property, and petit larceny. *A. W. Townsley* v. *United States* (D.C. App. 1967, 236 A. 2d 63).

Evidence was insufficient to sustain petit larceny conviction of defendant who placed meat in shopping bag in self-service store. *S. A. Durphy* v. *United States* (D.C. App. 1967, 235 A. 2d 326).

On the record the evidence was sufficient to sustain defendant's conviction of petit larceny in taking property from parked automobile. *T. A. Green* v. *United States* (D.C. App. 1967, 234 A. 2d 177).

Evidence, including evidence as to exclusive control or possession of television in defendant, sustained conviction for unlawful entry and petit larceny. *J. L. Benbow* v. *United States* (D.C. App. 1967, 227 A. 2d 772).

Cigarettes found in defendants' possession, with same "wholesale numbers" as cigarettes left in store, but not otherwise identified as having come from store, had little, if any, probative value. *S. C. Davis and C. L. Colbert* v. *United States* (D.C. App. 1967, 230 A. 2d 485).

Evidence of defendants' physical and chronological proximity to scene of housebreaking, and their leaving at a trot, was insufficient to sustain conviction for attempted housebreaking and petit larceny. *Id.*

Conviction of petit larceny for taking money by means of "film-flam" operation in which alleged accomplice persuaded victim to give him his money to be hidden in a handkerchief was not supported by evidence in absence of showing that any words were spoken by defendant implicating him in the crime, that any inducements were made to victim by defendant, that defendant put any money in the handkerchief, that defendant had anything to do with the hiding or that there was any criminal association or conspiracy between purported accomplice and defendant. *C. E. McMillan* v. *United States* (D.C. App. 1967, 230 A. 2d 715).

Evidence was ample to establish the offenses of petit larceny beyond a reasonable doubt. *V. J. Bond, Jr.* v. *United States* (D.C. App. 1967, 230 A. 2d 485).

—— Suppression

Denial of a motion to suppress evidence relating to stolen property and to narcotics paraphernalia found on the defendants after the arrest for a pedestrian traffic violation was proper. *J. R. West et ano.* v. *United States* (D.C. App. 1969, 249 A. 2d 740).

Fraud or trick

"Larceny" exists where there is a taking, against owner's will or without his consent, of thing which is subject of the crime. *W. W. Reed* v. *United States* (D.C. App. 1968, 239 A. 2d 156).

Taking of property by person who obtains its possession by means of fraud or trickery with preconceived design to appropriate it to his own use constitutes "larceny". *Id.*

Defendant who, with a companion, invited prosecuting witness to join them on visit to a prostitute and, en route, induced prosecuting witness to demonstrate his trust in defendant and companion by turning over his money to them and permitting them to walk around the block, and who then failed to return, was guilty of petit larceny. *Id.*

Where defendant, after approaching complaining witness and another person on street suggested that defendant could take witness and other person to place where they could have good time, and witness was called upon to prove trust by giving his money to defendant who was to walk around block with money, and defendant after turning corner and being confronted by police detective ran away, offense of petit larceny by trick was completed when defendant deviated from agreed course around block. *H. L. Williams* v. *United States* (D.C. App. 1968, 240 A. 2d 131).

Impeachment

Regardless of a claim of prejudice by reason of similarity between offenses of robbery and housebreaking, permitting impeachment of the defendant, charged with housebreaking but found guilty of petit larceny, by evidence as to one prior robbery conviction was not error. *A. Moss* v. *United States* (D.C. App. 1969, 250 A. 2d 567).

Inconsistent verdict

The trial court could have found defendant, who was carrying goods stolen from an apartment building, which he later abandoned when he attempted to flee, guilty of both attempted burglary and petit larceny charges on inference of guilt raised by defendant's unexplained possession of recently stolen property or even on the basis of this inference the trier of the facts could have had a reasonable doubt that defendant had necessary criminal intent upon entering apartment building to be convicted of attempted burglary, and thus verdicts of acquittal on

attempted burglary charge and guilty on petit larceny charge were not necessarily inconsistent or irreconcilable. *H. Barnes* v. *United States* (D.C. App. 1969, 254 A. 2d 724).

Evidence was sufficient to sustain petit larceny conviction. *Id.*

Ineffective assistance of counsel

Fact that new counsel was appointed not more than 60 minutes before trial did not amount to ineffective assistance of counsel of defendant charged with simple assault, unlawful entry and petit larceny where no continuance was requested and defendant announced he was ready for trial, factual situation was not so complex as to necessitate any extensive investigation and there were no witnesses for the defense who could have been called, new counsel was experienced and diligent and made no claim that he was hampered by appointment shortly before trial. *S. A. Tuttle* v. *United States* (D.C. App. 1968, 238 A. 2d 590).

Information—Amendment

Where amendment of information charging attempted second-degree burglary, destroying private property, and petit larceny to reflect that property in question belonged to corporation in care and custody of individual, as opposed to individual alone as charged in original information, conformed to testimony at trial and no prejudice was occasioned by the defense, permitting the amendment was not error. *J. L. King* v. *United States* (D.C. App. 1970, 271 A. 2d 556).

Instructions

Trial court's failure to preface the "satisfactorily explained" clauses with the word "that" in instructions concerning inference of guilt arising from possession of recently stolen property, unless possession is satisfactorily explained, did not constitute a directed verdict for the government on the issue of satisfactory explanation and did not constitute plain error in prosecution for unauthorized use of automobile and interstate transportation of automobile. *United States* v. *C. R. Howard* (1970, 433 F. 2d 505, — U.S. App. D.C. —).

Trial court's lack of explicitness, in defining "satisfactorily explained" within instructions on inference of guilt arising from recent possession of stolen property unless possession is satisfactorily explained, did not give rise to negative inference that issue of whether the explanation was satisfactory was out of the case in prosecution for unauthorized use and interstate transportation of automobile and did not constitute plain error. *Id.*

In the absence of a request for instruction on defense theory that defendant innocently borrowed stolen automobile from another and since the defendant had testified to that effect, trial court's failure to deliver sua sponte instruction on the defense theory was not plain error in prosecution for unauthorized use and interstate transportation of stolen automobile. *Id.*

Instructions given by trial judge in prosecution for petit larceny was comprehensive and clearly presented to jury the elements of asportation and intent. *F. Ginyard* v. *United States* (D.C. App. 1967, 232 A. 2d 590).

Plea of guilty

In this case the court held that the defendant, who had pleaded guilty to charge of petit larceny, was entitled to withdraw guilty plea since the trial court, prior to accepting plea, informed defendant only that he could receive up to 360 days in jail, but did not inform him of possibility of being sentenced under Federal Youth Corrections Act for a longer confinement, even though the Rule in effect at time guilty plea was made did not expressly require the court to determine if defendant was aware of consequences of his plea. *L. R. Curtis* v. *United States* (D.C. App. 1970, 268 A. 2d 603).

Prejudgment of guilt

Record would not substantiate contention that trial judge had prejudged question of defendant's guilt of petit larceny by trick. *H. L. Williams* v. *United States* (D.C. App. 1968, 240 A. 2d 131).

Prosecutor's remarks to jury

Record disclosed uncontested facts so confirming the defendant's guilt of second-degree burglary and petit larceny consisting in theft of money from coin-operated laundry machines located in locked basement room of an apartment building that any impropriety in the prosecuting attorney's argument must be classed as harmless error. *United States* v. *R. K. Jones* (1970, 433 F. 2d 1107, — U.S. App. D.C. —).

In this case, the court held that the statement of prosecuting attorney that if jury believed testimony of defendants, who were charged with burglary II and petit larceny, they must conclude that police officers were "out-and-out liars," was not so prejudicial as to require reversal. *United States* v. *Stevenson et ano.* (1970, 424 F. 2d 923, — U.S. App. D.C. —).

The use by prosecuting attorney of phrase "lucky enough to catch somebody right in the act," and to "catch them red-handed" was not so prejudicial as to constitute plain error. *Id.*

Review

The question of appellant's guilt or innocence turned solely on credibility of witnesses, and issue was to be determined by trier of fact and was not subject to review. *T. A. Green* v. *United States* (D.C. App. 1967, 234 A. 2d 177).

Right to stenographic record

Where reviewing court was supplied with statement which presented in considerable detail events of the trial, the testimony, and ruling of the trial judge, and furnished counsel with complete picture of proceedings, defendants were not prejudiced by failure to have the case stenographically reported and were not entitled to have their convictions for petit larceny and larceny from interstate shipment set aside. *F. House and S. Brandon* v. *United States* (D.C. App. 1967, 234 A. 2d 805).

Sentences

Statutory provision for two-year mandatory minimum sentence for burglary do not operate to prevent prosecution and sentencing for lesser misdemeanors of attempted burglary in second degree, destroying private property, and petit larceny, for which offenses the defendant was actually sentenced for one-half year more than two-year felony minimum. *J. L. King* v. *United States* (D.C. App. 1970, 271 A. 2d 556).

Action of trial court, taken while appeal was pending, in purportedly granting motion to correct sentence by making one-year sentence for petit larceny and six-month sentence for destroying property run concurrently rather than consecutively was beyond the court's power at that time and order purporting to reduce sentence would be vacated without prejudice to reentry if subsequently deemed appropriate. *Id.*

In this case the court held that a sentence of 360 days' imprisonment and fine of $200, or in default of payment an additional 360 days, for crime of petit larceny is, when applied to an indigent defendant, illegal as denial of equal protection under the law. *D. L. Lucas* v. *United States* (D.C. App. 1970, 268 A. 2d 524).

It is an abuse of discretion to sentence an indigent defendant to 360 days' imprisonment and fine of $200, or in default of payment an additional 360 days, for crime of petit larceny, since maximum punishment for crime of petit larceny was set by Congress at fine of not more than $200 or imprisonment for not more than one year, or both. *Id.*

Under the facts of this case where defendant's true crime was burglary in the second degree, a felony carrying a mandatory minimum sentence of two years, and prosecution reduced felony to the three separate misdemeanors of attempted burglary in second degree, destroying private property, and petit larceny, trial judge did not abuse discretion in imposing two consecutive one-year sentences and one concurrent one-year sentence following defendant's conviction on all three separate misdemeanors. *R. M. Weeks* v. *United States* (D.C. App. 1969, 252 A. 2d 907).

Validity of arrest

Whether a defendants' arrest on a charge of petit larceny was lawful depended upon arresting officer having probable cause to believe that they had in their possession "fruits of the crime". *S. Smith and W. Jeffries* v. *United States* (D.C. App. 1968, 247 A. 2d 293).

Validity of verdict

When one juror, on poll of a jury, answered that her vote of guilty on petit larceny charge was conditional, the

court should not have required juror to answer "guilty" or "not guilty" but should have returned the jury to jury room for further deliberation, and juror's subsequent response of "guilty" to court's directive did not remove uncertainty of her verdict. *P. E. Matthews* v. *United States* (D.C. App. 1969, 252 A. 2d 505).

§ 22–2203. Larceny after trust.

NOTES TO DECISIONS

Elements of offense

The fact that preconceived specific intent to deprive owner of possession is not an element of crime of larceny after trust does not preclude evidence which bears upon intent underlying the conversion. *United States* v. *J. R. Gay* (1969, 410 F. 2d 1036, 133 U.S. App. D.C. 337; rev'g and remanding 241 A. 2d 446).

"Larceny after trust" occurs when possession of property is entrusted to a person for purpose of applying property to owner's use and benefit. *W. W. Reed* v. *United States* (D.C. App. 1968, 239 A. 2d 156).

"Larceny after trust" is committed when person to whom property has been entrusted wrongfully converts it to his own use. *Id.*

Preconceived specific intent to deprive property owner of possession of property is not an element of offense of larceny after trust. *Id.*

For larceny after trust to exist, person to whom possession of property is entrusted must be given actual dominion and control over the property for purpose set forth by owner; a mere temporary custodian cannot commit larceny after trust. *Id.*

Evidence—Sufficiency of

Evidence supported jury finding that money received by defendant from religious order in connection with plan to acquire block of property for construction of house of studies for the order was not the proceeds of a loan, but was entrusted to the defendant for a specific purpose, and that defendant's conversion of the funds was larceny after trust. *United States* v. *V. J. Orsinger* (1970, 428 F. 2d 1105, — U.S. App. D.C. —).

Evidence, including evidence that complainant entrusted money to defendant as real estate broker for express purpose of having it applied as rental on apartment, that apartment was in fact not available, and that defendant kept money and refused to return it, was sufficient for jury in prosecution for larceny after trust. *J. R. Gay* v. *United States* (D.C. App. 1968, 241 A. 2d 446; rev'd and remanded 410 F. 2d 1036).

Evidence of other offenses

Testimony that defendant took deposit for apartment rental and thereafter neither made apartment available nor returned deposit on occasions other than that which was subject of prosecution for larceny after trust was not admissible within any exception to rule barring evidence of other offenses, and admission was reversible error. *J. R. Gay* v. *United States* (D.C. App. 1968, 241 A. 2d 446; rev'd and remanded 410 F. 2d 1036).

Evidence of similar criminal acts

The testimony of the witnesses fitted well within the established rule, in this jurisdiction as elsewhere, that a trial judge may allow evidence of similar criminal acts to prove intent if the prejudicial effect of admission is "outweighed by the probative value" of the evidence. *United States* v. *J. R. Gay* (1969, 410 F. 2d 1036, 133 U.S. App. D.C. 337; rev'g and remanding 241 A. 2d 446).

Fraudulent purpose

The requisite fraudulent purpose may be conceived at various stages in a transaction, and one who takes property in good faith may be convicted if his illegal designs mature after the property is in his possession. However, the essential legislative proscription is of his having "fraudulently converted" the property. *United States* v. *J. R. Gay* (1969, 410 F. 2d 1036, 133 U.S. App. D.C. 337; rev'g and remanding 241 A. 2d 446).

Speedy trial

Fact that some five years elapsed between dates of offenses and date of indictment charging fraud by wire, mail fraud, interstate transportation of check taken by fraud and larceny after trust did not deprive the defendant of fair and speedy trial since the prosecution resulted from extended investigation into complicated affairs of defendant and his corporations and there was no suggestion of any purposeful or otherwise improper delay in conduct of investigation and there was no showing of prejudice caused by the delay. *United States* v. *V. J. Orsinger* (1970, 428 F. 2d 1105, — U.S. App. D.C. —).

Statutory definition

The statutory provision for larceny after trust defines a violator as one who is shown to have "fraudulently converted" property entrusted to him. *United States* v. *J. R. Gay* (1969, 410 F. 2d 1036, 133 U.S. App. D.C. 337; rev'g and remanding 241 A. 2d 446).

Trust or debtor—creditor relationship

Whether a transaction creates trust relationship or that of debtor and creditor depends upon all facts and circumstances, including the intention of the parties. *United States* v. *V. J. Orsinger* (1970, 428 F. 2d 1105, — U.S. App. D.C. —).

The fact that interest is to be paid by person receiving money is evidence that debt is created as distinguished from trust obligation, but is not conclusive in prosecution for larceny after trust. *Id.*

Use and benefit

To establish offense of larceny after trust it must be proved that accused was entrusted with something of value, for the use and benefit of complainant, and that it was converted to accused's own use, with intent to deprive complainant of money or property. *J. R. Gay* v. *United States* (D.C. App. 1968, 241 A. 2d 446; rev'd and remanded 410 F. 2d 1036).

§ 22–2204. Unauthorized use of vehicles.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–581.

NOTES TO DECISIONS

Attempted unauthorized use of motor vehicle

Attempted unauthorized use of a motor vehicle is a crime under statutes prohibiting the taking, use, operation, or removal of a vehicle without owner's consent and calling for punishment of whoever shall attempt to commit any crime, which attempt is not otherwise punishable. *B. O. Greenwood III* v. *United States* (D.C. App. 1967, 225 A. 2d 878).

Circumstantial evidence

The court held that in a prosecution for driving a motor vehicle without the consent of owner, owner's nonconsent, like other elements of the offense, can be shown by circumstantial evidence so long as it meets the standards of proof accepted in the criminal law. *L. M. Powell* v. *United States* (1969, 418 F. 2d 470, 135 U.S. App. D.C. 254).

In particular situations in a prosecution under this section making it an offense to drive motor vehicle without consent of owner, circumstances offered may be too impotent to attest nonconsent. *Id.*

Legal sufficiency of circumstantial evidence to support finding of nonconsent is necessarily a matter of degree to be gauged in terms of its potential impact on reasonable minds. *Id.*

Collateral estoppel

Since the defendant who had been acquitted on charges of reckless driving, speeding, and driving motor vehicle after his permit had been suspended failed to present defense of collateral estoppel to the trial court hearing prosecution for unauthorized use of motor vehicle, the reviewing court would not consider claim. *R. Mahoney* v. *United States* (1969, 420 F. 2d 253, 137 U.S. App. D.C. 3).

Dismissal with prejudice

Dismissal, with prejudice, of indictment charging defendant with unauthorized use of a vehicle constituted adjudication barring another prosecution for same offense. *J. H. White, Jr.* v. *United States* (1967, 377 F. 2d 948, 126 U.S. App. D.C. 309).

Evidence

Since the trial judge in prior trial at time of granting mistrial as to various offenses relating to robbery directed verdict of acquittal on count charging unauthorized use of vehicle, admission of evidence in subsequent trial as

to theft of car which was subject of count as to which defendants had been acquitted and as to defendants' use of that car in robbery was reversible error under doctrine of collateral estopped. *A. Green et ano.* v. *United States* (1970, 426 F. 2d 661, — U.S. App. D.C. —).

Evidence supported conviction for attempted unauthorized use of motor vehicle. *B. O. Greenwood III* v. *United States* (D.C. App. 1967, 225 A. 2d 878).

Evidence supported conviction for attempted unauthorized use of automobile. *N. Dickson* v. *United States* (D.C. App. 1967, 226 A. 2d 364).

—— Sufficiency

Conviction of either grand larceny of automobile or unauthorized use of automobile entails evidence having enough probative power to convince the jury beyond reasonable doubt of every essential element, and also on identity of the accused as participant. *United States* v. *A. T. Johnson* (1970, 433 F. 2d 1160, — U.S. App. D.C. —).

Evidence, in prosecution for grand larceny of automobile, unauthorized use of such automobile, and for grand larceny of engine from another automobile, warrented the finding that the character of possession of stolen property, united with other evidence in case, would authorize inference attributing guilt to defendant. *Id.*

Finding by Juvenile Court that juvenile was a passenger in stolen automobile was insufficient to establish violation of this section forbidding unauthorized use of motor vehicle. *In the matter of A. R. Davis* (D.C. App. 1970, 264 A. 2d 297).

The evidence in this case supported conviction of unauthorized use of automobile in violation of this section. *C. S. Kee and W. J. Johnson* v. *United States* (1969, 418 F. 2d 465, 135 U.S. App. D.C. 249).

More proof was necessary to support a conviction for transporting a stolen vehicle across state lines in violation of Dyer Act than for unauthorized use in violation of this section since Dyer Act charge is dependent on intent that requires a stealing. *Id.*

In this case the evidence was sufficient to sustain conviction for driving a cab without the owner's consent. *L. M. Powell* v. *United States* (1969, 418 F. 2d 470, 135 U.S. App. D.C. 254).

Evidence was sufficient in a prosecution for attempted and unauthorized use of vehicle to permit trier of fact to find that recovered automobile belonged to government witness and that defendant did not have permission to drive it. *H. E. Waterstaat* v. *United States* (D.C. App. 1969, 252 A. 2d 507).

Evidence established that defendant was guilty of unauthorized use of vehicle. *United States* v. *J. W. Carter* (1967, 275 F. Supp. 769).

The record contains sufficient evidence from which the jury could have found or inferred that the car left by owner in the parking garage and the one driven onto the parking lot by appellant were one and the same. *F. E. Wesley* v. *United States* (D.C. App. 1967, 233 A. 2d 514).

Impeachment

In the case, the court held that a prior conviction of attempted housebreaking was properly used for impeachment of defendant charged with unauthorized use of vehicle and assault on police officer. *United States* v. *C. E. White* (1970, 427 F. 2d 634, — U.S. App. D.C. —).

Defendant who was accused of unauthorized use of automobile could be impeached by a showing of prior larceny convictions. *United States* v. *W. T. Carr* (1969, 418 F. 2d 1184, 135 U.S. App. D.C. 348, cert. denied 90 S. Ct. 590).

Inconsistent verdict

Verdict whereby defendant was convicted of and codefendant was acquitted of grand larceny of automobile, unauthorized use of the automobile, and grand larceny of engine from another automobile, was not inconsistent since the jury, rather than determining that codefendant lacked possession of stolen property, could have derived doubt as to whether codefendant collaborated in commission of charged offenses. *United States* v. *A. T. Johnson* (1970, 433 F. 2d 1160, — U.S. App. D.C. —).

Instructions

Fact that the jury was instructed, in prosecution for grand larceny of automobile and of automobile engine and for unauthorized use of motor vehicle, that if prerequisite to inference of guilt for possession of recently stolen property exists beyond reasonable doubt it could be inferred that defendant was guilty of one or both of such offenses, but was not instructed that inference permissible was that defendant was person who committed such offense if government proved all of their essential elements beyond reasonable doubt, did not warrant reversal of conviction since, in other portions of charge, instruction was given on presumption of innocence and government's burden of proof beyond reasonable doubt. *United States* v. *A. T. Johnson* (1970, 433 F. 2d 1160, — U.S. App. D.C. —).

Trial court's failure to preface the "satisfactory explained" clauses with the word "that" in instructions concerning inference of guilt arising from possession of recently stolen property, unless possession is satisfactorily explained, did not constitute a directed verdict for the government on the issue of satisfactory explanation and did not constitute plain error in prosecution for unauthorized use of automobile and interstate transportation of automobile. *United States* v. *C. R. Howard* (1970, 433 F. 2d 505, — U.S. App. D.C. —).

Trial court's lack of explicitness, in defining "satisfactorily explained" within instructions on inference of guilt arising from recent possession of stolen property unless possession is satisfactorily explained, did not give rise to negative inference that issue of whether the explanation was satisfactory was out of the case in prosecution for unauthorized use and interstate transportation of automobile and did not constitute plain error. *Id.*

In the absence of a request for instruction on defense theory that defendant innocently borrowed stolen automobile from another and since the defendant had testified to that effect, trial court's failure to deliver sua sponte instruction on the defense theory was not plain error in prosecution for unauthorized use and interstate transportation of stolen automobile. *Id.*

Jury question

In this case the evidence raised jury question as to defendant's guilt of unauthorized use of an automobile which owner testified was taken from parking garage without her permission *United States* v. *W. T. Carr* (1969, 418 F. 2d 1184, 135 U.S. App. D.C. 348; cert. denied 90 S. Ct. 590).

Knowledge

Conviction under this section for unauthorized use of motor vehicle requires proof that accused had guilty knowledge of unauthorized use. *In the matter of A. R. Davis* (D.C. App. 1970, 264 A. 2d 297).

Lapse of time between theft and arrest

Lapse of five days between theft of automobile and arrest of defendant operating it did not insulate him from criminal liability for attempted unauthorized use of motor vehicle. *B. O. Greenwood III* v. *United States* (D.C. App. 1967, 225 A. 2d 878).

Limited affirmance

In this case where the evidence was sufficient to sustain a conviction of unauthorized use of automobile but the court had doubts as to its sufficiency to support convictions for robbery and for transporting stolen vehicle across state line in violation of Dyer Act, sentence of youthful offenders under Federal Youth Corrections Act would be affirmed in interest of justice limited to a conviction of unauthorized use of automobile. *C. S. Kee and W. J. Johnson* v. *United States* (1969, 418 F. 2d 465, 135 U.S. App. D.C. 249).

Proof of ownership

Any failure of prosecution to show who owned automobile involved in prosecution for attempted unauthorized use of motor vehicle did not preclude conviction where it was established that ownership was in some third party. *N. Dickson* v. *United States* (D.C. App. 1967, 226 A. 2d 364).

Province of jury

In deciding whether secretaries of the owner had given their consent, in a prosecution for driving a motor vehicle without consent of owner, jury could legitimately have acknowledged that employees ordinarily observe restrictions on their authority and are obedient to employer

mandates as to how their tasks are to be performed. *L. M. Powell* v. *United States* (1969, 418 F. 2d 470, 135 U.S. App. D.C. 254).

Rented automobile

Evidence that defendant was afraid to return automobile to rental agency because he was unable to pay rent he owed and absence of evidence that defendant tried to disguise automobile, change license plates or in any other way appropriate it to his exclusive benefit and absence of evidence that rental agency notified defendant that it considered rental contract breached and that defendant would be charged with violation of criminal laws if he failed to return automobile did not establish violaton of statute prohibiting unauthorized use of automobile. *United States* v. *H. B. McLaughlin, Sr.* (1967, 278 F. Supp. 320).

Review

Defendant could not be heard to complain on appeal of conviction for attempted unauthorized use of motor vehicle in view of proof of completion of offense of unauthorized use of the vehicle. *B. O. Greenwood III* v. *United States* (D.C. App. 1967, 225 A. 2d 878).

Sentences

The single taking of an automobile can constitute both offense of grand larceny of automobile and offense of unauthorized use of automobile, and can authorize separate though concurrent sentences under each. *United States* v. *A. T. Johnson* (1970, 433 F. 2d 1160, — U.S. App. D.C. —).

Unauthorized use

Unauthorized use statute does not require that automobile be stolen in order to render its use unlawful. *United States* v. *H. B. McLaughlin, Sr.* (1967, 278 F. Supp. 320).

Under statute prohibiting unauthorized use of automobile, use of rented automobile in excess of express consent given in rental contract is not to be equated with use "without the consent of the owner." *Id.*

§ 22–2205. Receiving stolen goods.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–546, 23–581.

NOTES TO DECISIONS

Evidence

Where evidence was merely impeaching and was not material to issues involved nor was it probable that in new trial appellant would be acquitted because of it, trial court did not abuse its discretion in denying motion for new trial based upon newly discovered evidence. *W. D. Heard* v. *United States* (D.C. App. 1968, 245 A. 2d 125).

—— Admissibility

Since defendant dropped shopping bag containing stolen articles on street prior to his arrest, officers' recovery of bag was not a "seizure" in the Fourth Amendment sense but was merely a retrieval of abandoned property and, therefore, even if probable cause did not exist for subsequent arrest of the defendant, the shopping bag was admissible in prosecution for receiving stolen property. *M. Brown* v. *United States* (D.C. App. 1969, 261 A. 2d 834).

—— Sufficiency

Evidence that defendant was in possession of recently stolen coat is sufficient to sustain conviction of receiving stolen property. *H. Blue* v. *United States* (D.C. App. 1970, 270 A. 2d 508).

Instructions

The court held that in prosecution for receiving stolen property, viewed as a whole, instructions which mentioned the requirement that defendant must have received goods with intent to defraud and which explained meaning of intent were proper. *M. Brown* v. *United States* (D.C. App. 1969, 261 A. 2d 834).

Where instruction on possession in prosecution for receiving stolen goods was full and complete, and defense counsel indicated that he would accept court's ruling on the question, refusal to instruct that defendant must have had exclusive possession was not ground for reversal. *F. H. Scott* v. *United States* (D.C. App. 1967, 228 A. 2d 637).

Search and seizure

Where officers had valid search warrant and while making search officers found pistol which was not listed in warrant, seizure of pistol which subsequently turned out to be stolen and which formed basis of prosecution for receiving stolen property was legal. *W. D. Heard* v. *United States* (D.C. App. 1968, 245 A. 2d 125).

§ 22–2206. Stealing property of District of Columbia.

NOTES TO DECISIONS

Instructions

While facts in case resulting in conviction for stealing property belonging to District of Columbia may have justified a charge limited to elements of larceny, introduction of the words "steal" and "purloin" into the charge placed an obligation on trial judge to explain their meaning and relation to the larceny term. *W. D. Mitchell et al.* v. *United States* (1968, 394 F. 2d 767, 129 U.S. App. D.C. 292).

Trial judge would not be obligated to delineate the issues of each of the crimes covered by District of Columbia statute prohibiting the embezzlement, stealing or purloining of any property of the District, but he would be obliged to specify the elements of the crime or crimes most closely related to the factual situation. *Id.*

In prosecution for embezzlement, stealing and purloining of property of District of Columbia, while judge did speak of elements of property value and wrongful taking in his charge on robbery counts, it was inadequate to cover the shortcomings of the charge since the taking, constituting an element of robbery, was substantially different from a larceny taking, and trial judge did not refer jury to those portions of his earlier charge. *Id.*

Conviction of defendants under statute relating to the stealing, embezzling or purloining of any money, property, or writing of the District of Columbia, for stealing service revolver of officer, would be reversed where court's charge was inadequate to properly instruct jury upon all crucial elements of the offenses embraced within prosecution's evidence. *Id.*

Construction

Use of words "embezzle, steal or purloin", in District of Columbia statute relating to property of the District, indicated that Congress intended to include in the penalized conduct every offense falling between common-law larceny and embezzlement, so that, at the very least, robbery, embezzlement and larceny of property belonging to the District of Columbia are outlawed by the statute. *W. D. Mitchell et al.* v. *United States* (1968, 394 F. 2d 767, 129 U.S. App. D.C. 292).

Knowledge of government ownership is a necessary element of offense condemned by statute relating to the embezzlement, stealing or purloining of any money, property or writing of the District of Columbia, since the statute, which provides more severe penalties than other statutes relating to petit larceny and petit embezzlement, would be a greater deterrent only if potential wrongdoers were aware that property they were intending to steal belonged to the District. *Id.*

Chapter 23.—LIBEL—BLACKMAIL

Sec.
22–2306. Intent to commit extortion by communication of illegal threats and demands—Penalties.
22–2307. Threatening to kidnap or injure a person or damage his property—Penalty.

§ 22–2301. Libel.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–2302.

§ 22–2306. Intent to commit extortion by communication of illegal threats and demands—Penalties.

Whoever with intent to extort from any person, firm, association, or corporation, any money or other thing of value: (1) transmits within the District of Columbia any communication containing any demand or request for ransom or reward for the release of any kidnapped person, shall be fined not more than $5.000 or imprisoned not more than twen-

ty years, or both; (2) transmits within the District of Columbia any communication containing any threat to kidnap any person or any threat to injure the person of another, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both; or (3) transmits within the District of Columbia any communication containing any threat to injure the property or reputation of the recipient of the communication or of another or the reputation of a deceased person or any threat to accuse the recipient of the communication or any other person of a crime, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both. (June 19, 1968, Pub. L. 90–351, § 1501, title X, 82 Stat. 238.)

CODIFICATION

Section 1501 of the act of June 19, 1968, is a part of Pub. L. 90–351, designated by section 1 thereof as the "Omnibus Crime Control and Safe Streets Act of 1968." Sections 1302 and 1502 thereof are classified to sections 23–105 and 22–2307 of this code. For classification of other provisions of Pub. L. 90–351 see distribution tables in the U.S. Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–546.

§ 22–2307. Threatening to kidnap or injure a person or damage his property—Penalty.

Whoever threatens within the District of Columbia to kidnap any person or to injure the person of another or physically damage the property of any person or of another person, in whole or in part, shall be fined not more than $5,000 or imprisoned not more than twenty years, or both. (June 19, 1969, Pub. L. 90–351, § 1502, title X, 82 Stat. 238.)

CODIFICATION

Section 1502 of the act of June 19, 1968, is a part of Pub. L. 90–351, designated by section 1 thereof as the "Omnibus Crime Control and Safe Streets Act of 1968." Sections 1302 and 1501 thereof are classified to sections 23–105 and 22–2306 of this code. For classification of other provisions of Pub. L. 90–351 see distribution tables in the U.S. Code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–546.

Chapter 24.—MURDER—MANSLAUGHTER

§ 22–2401. Murder in the first degree—Purposeful killing—Killing while perpetrating certain crimes.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–502, 22–2403, 23–546.

NOTES TO DECISIONS

Acquittal

Where government was unable to show any motive for killing of victim nor was there any showing of prior threats or quarrels which might supply inference of premeditation and deliberation in defendant's killing of victim by multiple stab wounds inflicted with knife defendant had been carrying with him that night, government's evidence was insufficient to warrant submission of an issue of premeditation and deliberation to jury and defendant's motion for acquittal of first-degree murder should have been granted at conclusion of prosecution's case. *B. Austin* v. *United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Appreciable time

"Appreciable time" charge in homicide prosecution is a meaningful way to convey to jury the core meaning of premeditation and deliberation and for that reason should be given at least where specifically requested by defense. *B. Austin* v. *United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Court's refusal in homicide prosecution to state that the time one must have for deliberation be "some appreciable period of time" rather than "some period of time" as originally proposed by judge was compounded by charge of court that the time to deliberate may be in the nature of hours, minutes or seconds. *Id.*

Authority of jury

A jury may consider issue of second-degree murder on an indictment of first-degree felony-murder only if it finds some defect with proof as to felony-murder. *W. H. Fuller* v. *United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

Evidence—Admissibility

Suspicion of codefendants charged with first-degree murder that some understanding existed that witness, who had also participated in alleged murder, might not be prosecuted or that he believed he would not be, was not sufficient to exclude his otherwise admissible testimony as to details of crime. *R. T. Brown, J. D. Irby and R. L. Jones* v. *United States* (1967, 375 F. 2d 310, 126 U.S. App. D.C. 134).

—— Sufficiency

In prosecution for first-degree murder under this section, eyewitness testimony describing shooting together with notes written by defendant prior to shooting indicating he contemplated murder and suicide were sufficient to establish elements of premeditation and deliberation. *United States* v. *A. Sutton* (1969, 426 F. 2d 1202, — U.S. App. D.C. —).

Evidence, including testimony of girl friend of one defendant as to incriminating statements which both defendants made to her, sustained convictions for felony murder and for attempted robbery. *A. Calloway and T. L. S. McCowey* v. *United States* (1968, 399 F. 2d 1006, 130 U.S. App. D.C. 273).

Proof in homicide prosecution was legally sufficient to support a verdict predicated on thesis that shotgun was discharged killing victim while a robbery was then being attempted. *E. M. Harrison and O. G. White* v. *United States* (1967, 387 F. 2d 203, 128 U.S. App. D.C. 245).

Evidence was sufficient to sustain conviction of one defendant of felony murder. *Id.*

Accused who put on defense to first-degree murder case did not thereby waive earlier motion for acquittal or expose himself to death penalty which government was not entitled to pursue in view of fact that at close of prosecution's case defendant was entitled to acquittal of first-degree murder charge because evidence adduced by prosecution was not sufficient to permit a reasonable man to find that elements of first-degree murder existed beyond reasonable doubt. *B. Austin* v. *United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Evidence of eyewitness, corroborated by physical details otherwise in evidence, supported verdicts finding defendants guilty of first-degree murder and housebreaking. *R. T. Brown, J. D. Irby and R. L. Jones* v. *United States* (1967, 375 F. 2d 310, 126 U.S. App. D.C. 134).

First degree murder defined

First-degree murder requires premeditation and deliberation and covers calculated and planned killings while homicides that are unplanned or impulsive, even though they are intentional and with malice aforethought, are murder in the second degree. *B. Austin* v. *United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Intentional murder is in the first degree if committed in cold blood and is murder in the second degree if committed on impulse or in the sudden heat of passion. *Id.*

Instructions

Since the trial judge's charge contained two erroneous instructions equating intent with malice as essential ingredient of murder and stating that law infers or presumes malice from use of deadly weapon in commission of homicide and both instructions were later reread to jury and jury returned verdict, not of first-degree murder, but of murder in second degree and the jury did not accept whole of government's evidence bearing on degree of defendant's culpability, instructional errors will be noticed by Court of Appeals despite defendant's failure to object at trial and require reversal of conviction of murder in second degree. *United States* v. *A. Wharton* (1970, 433 F. 2d 451, — U.S. App. D.C. —).

Charge to a jury that in absence of explanatory circumstances the law infers or presumes malice from use of deadly weapon was error. *K. Green* v. *United States* (1968, 405 F. 2d 1368, 132 U.S. App. D.C. 98).

In homicide prosecution, charge to jury which submitted first-degree murder, second-degree murder, and manslaughter and which contained statement that wrongful act intentionally done was done with malice was prejudicial error. *Id.*

Jury may be instructed on second-degree murder as lesser included offense though indictment is solely for felony-murder, *W. H. Fuller* v. *United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

Where an indictment charged in separate counts both first-degree felony-murder and first-degree premeditated murder and the trial judge charged with respect to both felony-murder and second-degree murder, in the absence of any request, motion or objection by the defendant, failure to further charge that jury, which returned verdicts of guilty both as to felony-murder and as to manslaughter as lesser included offense, should consider question of second-degree murder only if it determined that government had not met its burden as to some element of first-degree murder charged, was not plain error and was not reversible error. *Id.*

Charge in homicide prosecution should focus primarily on defendant's actual thought processes in terms of meditation and conscious weighing of alternatives and the appreciable time element is subordinate, necessary for but not sufficient to establish deliberation. *B. Austin* v. *United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Analysis of jury would be illuminated if it is first advised that a typical case of first-degree murder is the murder in cold blood while murder committed on impulse or in sudden passion is murder in the second degree, and then instructed that a homicide conceived in passion constitutes murder in the first degree only if jury is convinced beyond a reasonable doubt that there was an appreciable time after design was conceived and that in this interval there was further thought and a turning over in the mind and not mere persistence of an initial impulse of passion. *Id.*

Lesser included offense

Where an indictment charges felony-murder, a verdict of second-degree murder is appropriate if there is proof from which the jury might reasonably find that defendant did not commit one of the enumerated felonies but was guilty of an intentional killing on impulse, and on this state of proof a charge of second-degree murder as a lesser included offense may be requested by prosecution or defense. *W. H. Fuller* v. *United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

Malice

A wrongful act intentionally done is not therefore done with malice. *K. Green* v. *United States* (1968, 405 F. 2d 1368, 132 U.S. App. D.C. 98).

Multiple counts

If prosecutor files in two counts of first-degree murder, once a charge of premeditated murder is struck as unsupported by sufficient evidence and that count is reduced to second-degree murder, defendant is entitled, on motion, to have entire count struck and to have issue of guilt as to second-degree murder submitted only as lesser included offense and only in the event of reasonable doubt of guilt of greater offense. *W. H. Fuller* v. *United States* (1968, 407 F. 2d 1199, 132 U.S. App. 264; cert. denied 89 S. Ct. 999).

Right to counsel

Government's introduction at third murder trial of crucial testimony given by defendant at his first trial at which he did not have the constitutionally guaranteed right to assistance of counsel, impinged on defendant's constitutional rights requiring a reversal of his conviction for felony murder. *E. M. Harrison and O. G. White* v. *United States* (1967, 387 F. 2d 203, 128 U.S. App. D.C. 245).

Unlawful killing

Unlawful killing in sudden heat of passion, whether produced by rage, resentment, anger, terror or fear is reduced from murder to manslaughter only if there was adequate provocation, such as might naturally induce a reasonable man in passion of the moment to lose some self-control and commit act on impulse and without reflection. *B. Austin* v. *United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

§ 22–2402. Murder in first degree—Placing obstructions upon or displacement of railroad.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–502, 22–2403.

NOTES TO DECISIONS

Instructions

Jury may be instructed on second-degree murder as lesser included offense though indictment is solely for felony-murder. *W. H. Fuller* v. *United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

Where an indictment charged in separate counts both first-degree felony-murder and first-degree premeditated murder and the trial judge charged with respect to both felony-murder and second-degree murder, in the absence of any request, motion or objection by the defendant, failure to further charge that jury, which returned verdicts of guilty both as to felony-murder and as to manslaughter as lesser included offense, should consider question of second-degree murder only if it determined that government had not met its burden as to some element of first-degree murder charged, was not plain error and was not reversible error. *Id.*

Multiple counts

If prosecutor files in two counts of first-degree murder, once a charge of premeditated murder is struck as unsupported by sufficient evidence and that count is reduced to second-degree murder, defendant is entitled, on motion, to have entire count struck and to have issue of guilt as to second-degree murder submitted only as lesser included offense and only in the event of reasonable doubt of guilt of greater offense. *W. H. Fuller* v. *United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

§ 22–2403. Murder in second degree.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–502, 23–546.

NOTES TO DECISIONS

Abuse of discretion

In a case where a juvenile had killed his father, and several witnesses had testified to juvenile's fear of his father, exclusion of testimony of juvenile's probation officer, that the juvenile had come to the officer several days before the shooting in order to seek his advice concerning the violent outbreaks of the father and that the officer had told juvenile to contact police whenever such outbreaks occurred, was not an abuse of discretion and was not prejudicial since proffered evidence was cumulative and more remote than the evidence already admitted which dealt with juvenile's state of mind on the day in question. *In the Matter of M. Bumphus, Jr.* (D.C. App. 1969, 254 A. 2d 400).

Accidental and unintentional

Even an accidental or unintentional killing will constitute second-degree murder if accompanied by malice. *R. L. Logan* v. *United States* (1969, 411 F. 2d 679, 133 U.S. App. D.C. 365).

The defendant correctly asserted that the commission of an act, the natural and probable consequences of which are less than death or great bodily harm does not imply malice. *Id.*

Acquittal

Where government was unable to show any motive for killing of victim nor was there any showing of prior threats or quarrels which might supply inference of premeditation and deliberation in defendant's killing of victim by multiple stab wounds inflicted with knife defendant had been carrying with him that night, government's evidence was insufficient to warrant submission

of an issue of premeditation and deliberation to jury and defendant's motion for acquittal of first-degree murder should have been granted at conclusion of prosecution's case. *B. Austin* v. *United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Alternative charge of first- and second-degree murder

Statute defining crimes of first- and second-degree murder do not impel requirement that they be charged in the alternative, as their substantive elements do not conflict. *W. H. Fuller* v. *United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

Appreciable time

"Appreciable time" charge in homicide prosecution is a meaningful way to convey to jury the core meaning of premeditation and deliberation and for that reason should be given at least where specifically requested by defense. *B. Austin* v. *United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Court's refusal in homicide prosecution to state that the time one must have for deliberation be "some appreciable period of time" rather than "some period of time" as originally proposed by judge was compounded by charge of court that the time to deliberate may be in the nature of hours, minutes, or seconds. *Id.*

Authority of jury

A jury may consider issue of second-degree murder on an indictment of first-degree felony-murder only if it finds some defect with proof as to felony-murder. *W. H. Fuller* v. *United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

Construction

Purpose and effect of the "except" clause in the provision which states that whoever with malice aforethought, except as provided in sections defining first-degree murder, kills another is guilty of second-degree murder is that all homicides with malice are murder and punishable by maximum of life imprisonment set forth for murder in second-degree, except that those particularly heinous murders listed in first-degree section are punishable capitally. *W. H. Fuller* v. *United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

Second-degree murder statute does not define substantive offense of second-degree murder so as to exclude therefrom all crimes that also come within first-degree murder statutes. *Id.*

Cumulative punishment

Although defendant may be found guilty under the first-degree murder and second-degree murder statute does not mean that he is subject to cumulative punishment. *W. H. Fuller* v. *United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

Evidence—Sufficiency

There was ample evidence to support a conviction for second degree murder by willful and malicious actions *R. L. Logan* v. *United States* (1969, 411 F. 2d 679, 133 U.S. App. D.C. 365).

Accused who put on defense to first-degree murder case did not thereby waive earlier motion for acquittal or expose himself to death penalty which government was not entitled to pursue in view of fact that at close of prosecution's case defendant was entitled to acquittal of first-degree murder charge because evidence adduced by prosecution was not sufficient to permit a reasonable man to find that elements of first-degree murder existed beyond reasonable doubt. *B. Austin* v. *United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

First degree murder defined

First-degree murder requires premeditation and deliberation and covers calculated and planned killings while homicides that are unplanned or impulsive, even though they are intentional and with malice aforethought, are murder in the second degree. *B. Austin* v. *United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Intentional murder is in the first degree if committed in cold blood and is murder in the second degree if committed on impulse or in the sudden heat of passion. *Id.*

Impeachment

Failure of judge to exercise his discretion in admitting or refusing to admit as impeaching evidence three prior assaults of appellant, will not be a basis for reversing conviction. *T. D. Lewis* v. *United States* (1967, 381 F. 2d 894, 127 U.S. App. D.C. 115).

Instructions

Instruction that if the Government had proved beyond reasonable doubt that defendant had indeed committed acts disclosed by the evidence as a result of which the victim died but that the Government had failed to prove element of malice necessary to second-degree murder, jury may consider whether defendant was guilty of lesser included offense of manslaughter, did not improperly permit the jury to infer requisite malice if they accepted defendant's version that his assault was only of minor dimensions and not by itself sufficient to disclose intent to cause great or serious bodily harm. *R. L. Logan* v. *United States* (1969, 411 F. 2d 679, 133 U.S. App. D.C. 365).

Charge to a jury that in absence of explanatory circumstances the law infers or presumes malice from use of deadly weapon was error. *K. Green* v. *United States* (1968, 405 F. 2d 1368, 132 U.S. App. D.C. 98).

In homicide prosecution, charge to jury which submitted first-degree murder, second-degree murder, and manslaughter and which contained statement that wrongful act intentionally done was done with malice was prejudicial error. *Id.*

Jury may be instructed on second-degree murder as lesser included offense though indictment is solely for felony-murder. *W. H. Fuller* v. *United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

Where an indictment charged in separate counts both first-degree felony-murder and first-degree premeditated murder and the trial judge charged with respect to both felony-murder and second-degree murder, in the absence of any request, motion or objection by the defendant, failure to further charge that jury, which returned verdicts of guilty both as to felony-murder and as to manslaughter as lesser included offense, should consider question of second-degree murder only if it determined that government had not met its burden as to some element of first-degree murder charged, was not plain error and was not reversible error. *Id.*

Charge in homicide prosecution should focus primarily on defendant's actual thought processes in terms of meditation and conscious weighing of alternatives and the appreciable time element is subordinate, necessary for but not sufficient to establish deliberation. *B. Austin* v. *United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Analysis of jury would be illuminated if it is first advised that a typical case of first-degree murder is the murder in cold blood while murder committed on impulse or in sudden passion is murder in the second degree, and then instructed that a homicide conceived in passion constitutes murder in the first degree only if jury is convinced beyond a reasonable doubt that there was an appreciable time after design was conceived and that in this interval there was further thought and a turning over in the mind and not mere persistence of an initial impulse of passion. *Id.*

Lesser included offense

Instructing on elements of lesser included offense of manslaughter where judge defined only voluntary and not involuntary manslaughter, it was not prejudicial to defendant as improperly precluding jury from rendering a verdict of involuntary manslaughter when defendant did not request involuntary manslaughter instruction, and elements of voluntary manslaughter were properly defined, and trial judge properly emphasized essential distinction between murder and manslaughter and presence or absence of malice. *R. L. Logan* v. *United States* (1969, 411 F. 2d 679, 133 U.S. App. D.C. 365).

Where an indictment charges felony-murder, a verdict of second-degree murder is appropriate if there is proof from which the jury might reasonably find that defendant did not commit one of the enumerated felonies but was guilty of an intentional killing on impulse, and on this

state of proof a charge of second-degree murder as a lesser included offense may be requested by prosecution or defense. *W. H. Fuller* v. *United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

Malice

A wrongful act intentionally done is not therefore done with malice. *K. Green* v. *United States* (1968, 405 F. 2d 1368, 132 U.S. App. D.C. 98).

Multiple counts

If prosecutor files in two counts of first-degree murder, once a charge of premeditated murder is struck as unsupported by sufficient evidence and that count is reduced to second-degree murder, defendant is entitled, on motion, to have entire count struck and to have issue of guilt as to second-degree murder submitted only as lesser included offense and only in the event of reasonable doubt of guilt of greater offense. *W. H. Fuller* v. *United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

Reckless conduct as manslaughter

The court held that reckless conduct resulting in death may constitute manslaughter; the difference between that recklessness which displays depravity and such extreme and wanton disregard for human life as to constitute "malice" and that recklessness which amounts only to manslaughter lies in the quality of awareness of the risk. *United States* v. *W. M. Dixon* (1969 419 F. 2d 288, 135 U.S. App. D.C. 401).

Sufficiency of record on appeal

Record showed a preponderance of competent evidence to sustain conviction of the juvenile of manslaughter and assault with a deadly weapon, and decision of juvenile court that juvenile was within its jurisdiction and should be committed to custody of Department of Public Welfare for indeterminate period was proper. *In the Matter of M. Bumphus, Jr.* (D.C. App. 1969, 254 A. 2d 400).

Unlawful killing

Unlawful killing in sudden heat of passion, whether produced by rage, resentment, anger, terror or fear is reduced from murder to manslaughter only if there was adequate provocation, such as might naturally induce a reasonable man in passion of the moment to lose some self-control and commit act on impulse and without reflection. *B. Austin* v. *United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

§ 22–2404. Punishment for murder in first and second degrees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–502.

NOTES TO DECISIONS

Alternative charge of first- and second-degree murder

Statute defining crimes of first- and second-degree murder do not impel requirement that they be charged in the alternative, as their substantive elements do not conflict. *W. H. Fuller* v. *United States* (1968, 407 F. 2d 1199, 407 U.S. App. D.C. 132; cert. denied 89 S. Ct. 999).

Appreciable time

"Appreciable time" charge in homicide prosecution is a meaningful way to convey to jury the core meaning of premeditation and deliberation and for that reason should be given at least where specifically requested by defense. *B. Austin* v. *United States* (1967, 382 F. 2d 129, 127 U.S. App. D.C. 180).

Court's refusal in homicide prosecution to state that the time one must have for deliberation be "some appreciable period of time" rather than "some period of time" as originally proposed by judge was compounded by charge of court that the time to deliberate may be in the nature of hours, minutes or seconds. *Id.*

Bifurcated trial

Trial court did not abuse its discretion in murder prosecution by denying motion for bifurcated trial with two juries on issues of insanity and defense to the merits. *W. L. Parman* v. *United States* (1968, 399 F. 2d 559, 130 U.S. App. D.C. 188).

Constitutionality

Statute providing that punishment for first-degree murder should be death unless jury by unanimous vote recommends otherwise did not needlessly penalize assertion of constitutional right and was not unconstitutional. *A. Calloway and T. L. S. McCowey* v. *United States* (1968, 399 F. 2d 1006, 130 U.S. App. D.C. 273).

Construction

Purpose and effect of the "except" clause in the provision which states that whoever with malice aforethought, except as provided in sections defining first-degree murder, kills another is guilty of second-degree murder is that all homicides with malice are murder and punishable by maximum of life imprisonment set forth for murder in second-degree except that those particularly heinous murders listed in first-degree section are punishable capitally. *W. H. Fuller* v. *United States* (1968, 407 F. 2d 1199, 407 U.S. App. D.C. 132; cert. denied 89 S. Ct. 999).

Second-degree murder statute does not define substantive offense of second-degree murder so as to exclude therefrom all crimes that also come within first-degree murder statutes. *Id.*

Cumulative punishment

Although defendant may be found guilty under the first-degree murder and second-degree murder statute does not mean that he is subject to cumulative punishment. *W. H. Fuller* v. *United States* (1968, 407 F. 2d 1199, 407 U.S. App. D.C. 132; cert. denied 89 S. Ct. 999).

Evidence—Sufficiency

On this motion to vacate sentence for first-degree murder, the only evidence that petitioner consumed large quantities of alcohol prior to his arrest was his own testimony, and the evidence including testimony by police officers which indicated petitioner was not intoxicated, established beyond a reasonable doubt that petitioner was not intoxicated when he made oral confessions to police. *H. F. Jarmans, Jr.* v. *United States* (1969, 303 F. Supp. 763).

On this motion to vacate sentence for first-degree murder, although expert testimony conflicted as to state of petitioner's mental health at time he made oral inculpatory statements, the evidence established beyond a reasonable doubt that petitioner was without mental illness and that his normal will to protect himself was not impaired when he made inculpatory statements. *Id.*

Proof in homicide prosecution was legally sufficient to support a verdict predicated on thesis that shotgun was discharged killing victim while a robbery was then being attempted. *E. M. Harrison and O. G. White* v *United States* (1967, 387 F. 2d 303, 128 U.S. App. D.C. 245).

Evidence was sufficient to sustain conviction of one defendant of felony murder. *Id.*

Right to counsel

Government's introduction at third murder trial of crucial testimony given by defendant at his first trial at which he did not have the constitutionally guaranteed right to assistance of counsel, impinged on defendant's constitutional rights requiring a reversal of his conviction for felony murder. *E. M. Harrison and O. G. White* v. *United States* (1967, 387 F. 2d 203, 128 U.S. App. D.C. 245).

§ 22–2405. Punishment for manslaughter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–502, 40–609a.

NOTES TO DECISIONS

Evidence—Sufficiency

The court held that in this case the inebriant atmosphere, the heated arguments and the bantering back and forth clearly established sufficient evidence for jury to be able to find defendant, who fired fatal shot in attempting to break up argument between two others, guilty of manslaughter. *United States* v. *W. M. Dixon* (1969, 419 F. 2d 288, 135 U.S. App. D.C. 401).

Instructions

Since the evidence in this case is insufficient to give rise to reasonable doubt that defendant intended to shoot one of the young men in group standing near corner,

the trial court did not err in failing to instruct jury on involuntary manslaughter. *T. W. Simon* v. *United States* (1970, 424 F. 2d 796, 137 U.S. App. D.C. 308).

The question of whether a defendant is entitled to involuntary manslaughter instruction depends on existence of at least some evidence in the record fairly tending to bear on issue of that offense. *Id.*

Recklessness as to accuracy of defendant's aim in shooting toward group of men standing near corner is not type of recklessness that would justify an involuntary manslaughter instruction since defendant did intend to shoot one of the men. *Id.*

Evidence of reckless conduct unintentionally resulting in death may form the basis for an involuntary manslaughter instruction. *Id.*

Defendant may not complain on appeal of deficiencies in instructions given by trial judge in manslaughter prosecution where none of alleged shortcomings were brought to the attention of trial court by appropriate objection or request. *United States* v. *E. Carter* (1969, 420 F. 2d 150, 136 U.S. App. D.C. 308).

Reckless conduct as manslaughter

The court held that reckless conduct resulting in death may constitute manslaughter; the difference between that recklessness which displays depravity and such extreme and wanton disregard for human life as to constitute "malice" and that recklessness which amounts only to manslaughter lies in the quality of awareness of the risk. *United States* v. *W. M. Dixon* (1969, 419 F. 2d 288, 135 U.S. App. D.C. 401).

Chapter 25.—PERJURY

§ 22–2501. Perjury—Subornation of perjury.

SECTION REFERRED TO IN OTHER SECTIONS

This section is refered to in section 47–1203.

Chapter 26.—PRISON BREACH—MISPRISIONS

§ 22–2601. Prison breach.

Any person committed to a penal institution of the District of Columbia who escapes or attempts to escape therefrom, or from the custody of any officer thereof or any other officer or employee of the District of Columbia, or any person who procures, advises, connives at, aids, or assists in such escape, or conceals any such prisoner after such escape, shall be guilty of an offense and upon conviction thereof shall be punished by imprisonment for not more than five years, said sentence to begin, if the convicted person be an escaped prisoner, upon the expiration of the original sentence. (July 15, 1932, 47 Stat. 698, ch. 492, § 8; June 6, 1940, 54 Stat. 243, ch. 254, § 6(a); July 29, 1970, Pub L. 91–358, title I, § 157(b), 84 Stat. 574.)

AMENDMENT

1970—Section 157(b) of Act July 29, 1970, Public Law 91–358 amended section by striking out "in any court of the United States."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24–203, 24–207.

§ 22–2603. Introducing contraband into penal institution.

Any person, not authorized by law, or by the Commissioners of the District of Columbia, or by the general superintendent of penal institutions of the District of Columbia, who introduces or attempts to introduce into or upon the grounds of any penal institution of the District of Columbia, whether located within the District of Columbia or elsewhere, any narcotic drug, weapon, or any other contraband article or thing, or any contraband letter or message intended to be received by an inmate thereof, shall be guilty of a felony, and, upon conviction thereof in the Superior Court of the District of Columbia or in any court of the United States, shall be punished by imprisonment for not more than ten years. (Dec. 15, 1941, 55 Stat. 800, ch. 572, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(30), 84 Stat. 572.)

AMENDMENT

1970—Section 155(c)(30) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 27.—PROSTITUTION—PANDERING

§ 22–2701. Prostitution—Inviting for purposes of, prohibited.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–2703, 22–3203.

NOTES TO DECISIONS

Double jeopardy

Judgments were required to be vacated and nolle prosequi entered in cases which had been pending before Court of General Sessions where government's action in entering the nolle prosequis could not be characterized as an abuse of its power, and to allow government to file new informations at a subsequent date would to violate double jeopardy clause of Fifth Amendment. *United States* v. *B. H. Foster* (D.C. App. 1967, 226 A. 2d 164).

Waiver of jury trial

A defendant, charged with solicitation for immoral and lewd purpose of committing oral sodomy, was not entitled to jury trial in view of fact that such offense was not indictable at common law and that penalty imposed was not more than $250 or imprisonment for not more than 90 days or both. *H. Gaithor* v. *United States* (D.C. App. 1969, 251 A. 2d 644).

§ 22–2707. Procurer—Punishment for receiving money or other valuable thing for arranging assignation or debauchery—Penalty.

NOTES TO DECISIONS

Attempt

In this case the evidence was sufficient to sustain convictions for attempted procuring. *J. R. Langley* v. *United States* (D.C. App. 1970, 264 A. 2d 503).

Evidence was sufficient to sustain conviction for attempted procuring, which showed that defendant and complaining witness bargained until they had agreed upon exchange of money, although uncertain in amount, for services of prostitute, and that immediately thereafter defendant led complaining witness a considerable distance to hotel unknown to witness where prostitute was supposedly waiting. *W. Walker, Jr.* v. *United States* (D.C. App. 1968, 248 A. 2d 187).

Constitutionality

This section, prohibiting receiving value for arranging for or causing female to engage in prostitution, debauchery, or any other immoral act, is not void for vagueness or so vague as to violate due process. *J. R. Langley* v. *United States* (D.C. App. 1970, 264 A. 2d 503).

Corroborating witness

Failure of prosecution to produce second officer who as a corroborating witness could only have testified to time and place of defendant's arrest for attempted procuring because he did not hear conversation between arresting officer and defendant was not error in view of prosecution's effort to secure a continuance because second officer was in another court and defendant's then counsel's willingness to proceed to trial in second officer's absence. *R. Blakney* v. *United States* (D.C. App. 1967, 225 A. 2d 654).

Elements of crime

Two principal elements of crime of procuring are the receipt of money and the arranging of an assignation. *W. Walker, Jr.* v. *United States* (D.C. App. 1968, 248 A. 2d 187).

Instructions

In a prosecution for attempted procuring involving contents of conversation that concededly took place between defendant and officer at street corner, instruction that if witness testified falsely concerning any material fact, about which the witness could not be reasonably mistaken, all testimony of such witness could be disregarded, except such parts as were corroborated by other testimony, was not plain error requiring reversal in absence of objection. *W. E. Smith* v. *United States* (D.C. App. 1970, 269 A. 2d 446).

In this case, instruction by trial court, in prosecution for attempted procuring, that jury must decide whether defendant had intent to procure female for immoral purposes, was proper when placed in context with entire charge as obviously referring to illegal sexual immoralities. *J. R. Langley* v. *United States* (D.C. App. 1970, 264 A. 2d 503).

§§ 22–2710 to 2712.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 22–2714.

§ 22–2713. Premises occupied for lewdness, assignation, or prostitution declared nuisance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–2714, 22–2717, 22–2720, 22–2721.

§ 22–2714. Abatement of nuisance under section 22–2713 by injunction—Temporary injunction—Effect of injunction.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–2716, 22–2717, 22–2720, 22–2721.

§§ 22–2715, 22–2716.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 22–2714, 22–2717, 22–2720, 22–2721.

§ 22–2717. Order of abatement—Sale of property—Entry of closed premises punishable as contempt.

If the existence of the nuisance be established in an action as provided in sections 22–2713 to 22–2720, or in a criminal proceeding, an order of abatement shall be entered as a part of the judgment in the case which order shall direct the removal from the building or place of all fixtures, furniture, musical instruments, or movable property used in conducting the nuisance, and shall direct the sale thereof in the manner provided for the sale of chattels under execution, and the effectual closing of the building or place against its use for any purpose, and so keeping it closed for a period of one year, unless sooner released. If any person shall break and enter or use a building, erection, or place so directed to be closed he shall be punished as for contempt, as provided in section 22–2716. (Feb. 7, 1914, 38 Stat. 281, ch. 16, § 5; Oct. 15, 1970, Pub. L. 91–452, title II, § 257, 84 Stat. 931.)

AMENDMENT

1970—Section 257 of Act Oct. 15, 1970, Pub L. 91–452, amended section by striking out "2721" and inserting in lieu thereof "2720".

EFFECTIVE DATE OF 1970 AMENDMENT

See sec. 260 of Act Oct. 15, 1970, Pub L. 91–452, set out as a note to § 23–545.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–2714, 22–2718, 22–2720.

§ 22–2718. Disposition of proceeds of sale.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–2714, 22–2717, 22–2720, 22–2721.

§ 22–2719. Bond for abatement—Order for delivery of premises—Effect of release.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–2717, 22–2720, 22–2721.

§ 22–2720. Tax for maintaining such nuisance.

Whenever a permanent injunction issues against any person for maintaining a nuisance as herein defined, or against any owner or agent of the building kept or used for the purpose prohibited by sections 22–2713 to 22–2720, there shall be assessed against said building and the ground upon which the same is located and against the person or persons maintaining said nuisance, and the owner or agent of said premises, a tax of $300. The assessment of said tax shall be made by the assessor of the District of Columbia and shall be made within three months from the date of the granting of the permanent injunction. In case the assessor fails or neglects to make said assessment the same shall be made by the chief of police, and a return of said assessment shall be made to the collector of taxes. Said tax shall be a perpetual lien upon all property, both personal and real used for the purpose of maintaining said nuisance, and the payment of said tax shall not relieve the person or building from any other penalties provided by law. The provisions of the law relating to the collection and distribution of taxes upon personal and real property shall govern in the collection and distribution of the tax herein prescribed in so far as the same are applicable and not in conflict with the provisions of said sections. (Feb. 7, 1914, 38 Stat. 282, ch. 16, § 8; Oct. 15, 1970, Pub. L. 91–452, title II, § 258, 84 Stat. 931.)

AMENDMENT

1970—Section 258 of Act Oct. 15, 1970, Pub. L. 91–452, amended section by striking out "2721" and inserting in lieu thereof "2720".

EFFECTIVE DATE OF 1970 AMENDMENT

See section 260 of Act Oct. 15, 1970, Pub. L. 91–452, set out as a note to § 23–545.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–2717.

§ 22–2721. Repealed. Oct. 15, 1970, Pub. L. 91–452, title II, § 256, 84 Stat. 931.

Section, act Feb. 14, ch. 16, § 9, 38 Stat. 282, as amended, related to granting immunity to witnesses. For general immunity statute, see 18 U.S.C. 6002.

EFFECTIVE DATE OF REPEAL

See section 260 of Act Oct. 15, 1970, Pub. L. 91–452, set out as a note to § 23–545.

§ 22–2722. Keeping bawdy or disorderly houses.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–2721, 22–3203.

Chapter 28.—RAPE

§ 22–2801. Definition and penalty.

Whoever has carnal knowledge of a female forcibly and against her will or whoever carnally knows and abuses a female child under sixteen years of age, shall be imprisoned for any term of years or for life. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 808; Apr. 19, 1920, 41 Stat. 567, ch. 153; Jan. 30, 1925, 43 Stat. 798, ch. 115, § 1; July 29, 1970, Pub. L. 91–358, § 204, title II, 84 Stat. 600.)

AMENDMENT

1970—Section 204 of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–502, 22–3501, 24–203.

NOTES TO DECISIONS

Composition of jury

A defendant, convicted of statutory rape, but who was not given death sentence, was not prejudiced by fact that his case was treated as a capital case and people opposed to capital punishment were systematically excluded from jury which found him guilty. *T. M. Springfield* v. *United States* (1968, 403 F. 2d 572, 131 U.S. App. D.C. 166).

Concurrent sentences

There was no resulting prejudice to a defendant in a case where concurrent sentences were imposed for crimes of carnal knowledge and housebreaking, as a result of error, if any, in failing to make out prima facie case of housebreaking. *P. E. A. Duckett* v. *United States* (1969, 410 F. 2d 1004, 133 U.S. App. D.C. 305).

Constitutionality

Statute which authorized jury to add words "with the death penalty" to verdict in rape case violates constitutional guarantee of right to jury trial but holding affects only those defendants whose trial began after April 8, 1968; overruling Lindsey v. United States, 77 U.S. App. D.C. 1, 133 F. 2d 368. *J. Bailey and R. Humphries* v. *United States* (1968, 405 F. 2d 1352, 132 U.S. App. D.C. 82).

The penalty provisions of rape statute which permits jury to inflict capital punishment are unconstitutional because they inhibit defendants from exercising Fifth Amendment right not to plead guilty and Sixth Amendment right to a jury trial. *T. M. Springfield* v. *United States* (1968, 403 F. 2d 572, 131 U.S. App. D.C. 166).

Conviction for carnal knowledge and taking indecent liberties

A defendant may not properly be convicted of both carnal knowledge and taking indecent liberties with minor child as result of one incident. *United States* v. *W. D. Heard* (1969, 420 F. 2d 628, 137 U.S. App. D.C. 60).

Since the defendant was charged with both carnal knowledge and taking indecent liberties with minor child, jury should have been instructed to first consider carnal knowledge offense and, if they found defendant guilty beyond a reasonable doubt, sole verdict should have been guilty of that offense, but if they acquitted defendant of carnal knowledge they should have proceeded to consider whether defendant was guilty or not guilty of the crime of indecent liberties. *Id.*

Corroboration

Testimony of the complaining witness must be corroborated with respect to fact of sexual assault and generally must be corroborated as to identification of accused by complainant; but in both instances, corroboration need not be by "direct evidence", but may consist of proven circumstances which tend to support complainant's story. *W. A. Carter, Jr.* v. *United States* (1970, 427 F. 2d 619, — U.S. App. D.C. —).

The need for corroboration of complainant's testimony depends upon danger of falsity and danger of erroneous identification in rape case is not of same magnitude as danger of fabricated rape. *Id.*

Corrobation of evidence by medical evidence sustained conviction for carnal knowledge of 15-year-old complainant. *P. E. A. Duckett* v. *United States* (1969, 410 F. 2d 1004, 133 U.S. App. D.C. 305).

There were sufficient corroborative facts and circumstances to merit submission to jury of a prosecution for carnally knowing female under 16 years of age. *J. Bailey and R. Humphries* v. *United States* (1968, 405 F. 2d 1352, 132 U.S. App. D.C. 82).

Independent proof must exist that points to probable guilt of the defendant or at least corroborates indirectly testimony of prosecutrix to warrant a conviction of carnally knowing female under 16 years of age. *Id.*

There existed ample corroboration of identification of defendant charged with carnal knowledge to warrant jury to reach the conclusion of guilt. *T. F. Dade* v. *United States* (1968, 407 F. 2d 692, 132 U.S. App. D.C. 229).

Since prosecutrix in carnal knowledge prosecution positively identified defendant the day following the crime, and her description of event was supported by her prompt report, condition of her clothing, welts on her neck, and her reported emotional condition, and in view of absence of evidence casting doubt on her trustworthiness or credibility of her testimony that she had abundant and unfettered opportunity to observe defendant prior to the crime, her identification did not require further corroboration because of minimal danger of falsification. *G. W. Thomas* v. *United States* (1967, 387 F. 2d 191, 128 U.S. App. D.C. 233).

Due process

The court held that the refusal of the government to comply with Juvenile Court's pre-trial orders granting extensive discovery motions of each of the three juveniles, charged separately with rape, did not then and there deprive the juveniles of due process, equal protection of the law, or the deprivation of the right to effective assistance of counsel at trial, nor did it then and there establish a denial of the juveniles' right to a "fair trial". *District of Columbia* v. *H. J. Jackson, C. M. Simpson and F. M. Alston* (D.C. App. 1970, 261 A. 2d 511).

Evidence—Sufficiency

In this case, the evidence was sufficient to corroborate the testimony of complaint that identified the defendant as her attacker. *W. A. Carter* v. *United States* (1970, 427 F. 2d. 619, — U.S. App. D.C. —).

In this case, the evidence in rape prosecution was sufficient to submit issue of victim's consent to jury and to support conviction for rape. *B. J. Johnson* v. *United States* (1970, 426 F. 2d 651, — U.S. App. D.C. —).

Impartial jury

Where on voir dire only those jurors were excluded who could not under any circumstance render verdict of guilty with death penalty and one juror who was opposed to death penalty was seated and actually served, defendants sentenced under Federal Youth Corrections Act, after being found guilty of carnally knowing female under 16 years of age, were not entitled to reversal of conviction on ground that jury was not impartial. *J. Bailey and R. Humphries* v. *United States* (1968, 405 F. 2d 1352, 132 U.S. App. D.C. 82).

Instructions

Instruction by trial court, in rape prosecution, that identification of assailant by the complaining witness may be sufficient if circumstances would convince of its accuracy beyond reasonable doubt and that, in considering accuracy of such identification, the jury could consider opportunity which complaining witness had to observe, or other factors and other evidence which may tend to corrobrate identification was adequate when considered in context of general instruction that there must be corroboration of testimony of complaining witness. *W. A. Carter, Jr.* v. *United States* (1970, 427 F. 2d 619, — U.S. App. D.C.—).

Refusal to give requested instruction as to requirement of corroboration of complainant's testimony that identified the defendant as her attacker was not error where

the instruction in purporting to summarize evidence corroborating complainant's testimony, presented incomplete, diluted and inaccurate statement of evidence that might have had tendency to mislead jury. *Id.*

In this case the failure of trial judge in prosecution for carnal knowledge of female under 16 years of age to instruct the jury on need for corroboration of prosecutrix' identification of defendant was not cause for reversal since no objection was made at trial and such instruction was not requested by defense counsel. *United States* v. *J. Dews* (1969, 417 F. 2d 753, 135 U.S. App. D.C. 185).

In this case the failure of trial judge in prosecution for carnal knowledge of female under 16 years of age to instruct on lesser included offenses was not reversible error since objection was not taken to portion of charge given and such instruction was not requested. *Id.*

The court's instruction that the jury could find defendant guilty of both carnal knowledge and taking indecent liberties with minor child as result of same incident was error. *United States* v. *W. D. Heard* (1969, 420 F. 2d 628, 137 U.S. App. D.C. 60).

Defendants who were convicted of carnally knowing a female under 16 years of age were not prejudiced because jury was instructed that the statute permitted them to impose the death penalty, even though such provision of the statute was constitutionally invalid, where prosecutor specifically stated that he was not going to seek the death penalty and presented no evidence to that end. *J. Bailey and R. Humphries* v. *United States* (1968, 405 F. 2d 1352, 132 U.S. App. D.C. 82).

Jencks Act

In this case, the court held that refusal to submit to jury complainant's Jencks Act statement, which had not been offered or received in evidence, was not error. *W. A. Carter, Jr.* v. *United States* (1970, 427 F. 2d 619, — U.S. App. D.C. —).

Newly discovered evidence

Defendant who was convicted of carnally knowing female under 16 years of age was not entitled to a new trial upon newly discovered evidence consisting of discrepancies in testimony of prosecutrix and her mother at the trial of one defendant's younger brother for the same offense. *J. Bailey and R. Humphries* v. *United States* (1968, 405 F. 2d 1352, 132 U.S. App. D.C. 82).

Partial invalidity of statute

Invalidity of portion of a statute which permitted the jury to impose the death penalty upon a person convicted of carnally knowing female under 16 years of age did not render remainder of statute invalid. *J. Bailey and R. Humphries* v. *United States* (1968, 405 F. 2d 1352, 132 U.S. App. D.C. 82).

Invalidity of statutory provision which permitted the jury to impose death penalty upon person convicted of carnally knowing female under 16 years of age did not render invalid convictions of defendants who received trial by completely fair and impartial jury and were not intimidated by threat of death into either waiving trial by jury or pleading guilty. *Id.*

Pre-trial discovery

The court held that any exculpatory information in government's possession should be given, in accordance with juveniles' request, to the three juveniles charged separately with rape. *District of Columbia* v. *H. J. Jackson, C. M. Simpson and F. M. Alston* (D.C. App. 1970, 261 A. 2d 511).

Remedy on appeal

Although defendant who was charged with both carnal knowledge and with taking indecent liberties with minor child did not request that the jury consider indecent liberties charge only after an acquittal of carnal knowledge and jury convicted defendant on both charges after being erroneously instructed that conviction on one charge should not influence verdict on other charge, the proper remedy was to remand case with instruction to vacate judgment of conviction of taking indecent liberties with minor child. *United States* v. *W. D. Heard* (1969, 420 F. 2d 628, 137 U.S. App. D.C. 60).

Treatment as a capital case

Defendants were not prejudiced because case was submitted to the jury as a capital case although a provision in the statute which authorized the jury to impose the death penalty for carnally knowing female under 16 years of age was constitutionally invalid, inasmuch as jury was offered no choice as to offenses for which defendant could be found guilty and prosecution made it clear it was not seeking the death penalty. *J. Bailey and R. Humphries* v. *United States* (1968, 405 F. 2d 1352, 132 U.S. App. D.C. 82).

Trial procedure

Defendant, who was convicted of statutory rape, but was not given a death sentence, was not prejudiced by the fact that the case was treated as a capital one, on ground that the verdict of guilty may have been a compromise, where prosecution never requested death penalty or even adverted to it, and trial judge gave it only a one-sentence mention in the charge to jury. *T. M. Springfield* v. *United States* (1968, 403 F. 2d 572, 131 U.S. App. D.C. 166).

Chapter 29.—ROBBERY

§ 22–2901. Robbery.

Whoever by force or violence, whether against resistance or by sudden or stealthy seizure or snatching, or by putting in fear, shall take from the person or immediate actual possession of another anything of value, is guilty of robbery, and any person convicted thereof shall suffer imprisonment for not less than two years nor more than fifteen years. (Mar. 3, 1901, 31 Stat. 1322, ch. 854, § 810; Dec. 27, 1967, Pub. L. 90–226, § 603, title VI, 81 Stat. 737.)

AMENDMENT

1967—Section 603, Act Dec. 27, 1967, Pub. L. 90–226, amended section by striking out "six months" and inserting "two years".

SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967

Section 1101, Act Dec. 27, 1967, Pub. L. 90–226, provided:

Whoever, prior to the date on enactment of this Act [Pub. L. 90–226], commits any act or engages in any conduct which constitutes an offense under provision of law amended by this Act [Amendments of sections 4–140, 15–714, 15–716, 22–501, 22–703, 22–1513, 22–1801, 22–2001, 22–2901, 22–3105, 22–3201, 22–3202, 23–610, 23–901, 23–903, 24–301 and enactments of sections 4–140a, 4–150a and 22–1122, and amendments of 18 U.S.C. 4122, 5024 and 5025] shall be sentenced in accordance with the law in effect on the date he commits such acts or engages in such conduct.

SEPARABILITY OF PROVISIONS

Section 1102, Act Dec. 27, 1967, Pub. L. 90–226, provided:

If any provision of or any amendment made by this Act [Pub. L. 90–226; for provisions and amendments made by this Act, see enumeration in note above under heading, "Sentence for offenses committed prior to Dec. 27, 1967."] or the application thereof to any person or circumstance is held invalid, the other provisions of or other amendments made by this Act and the application of such provisions and amendments to other persons or circumstances shall not be affected thereby.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–502, 22–2902, 23–546.

NOTES TO DECISIONS

Abuse of discretion

In robbery prosecution of pickpocket who allegedly took wallet from purse of lady in line of people outside White House grounds waiting to gain entrance to observe children's annual Easter egg roll, denial of request to instruct the jury on lessor included offense of larceny was not abuse of discretion. *R. T. Davis, Jr.* v. *United States* (1970, 433 F. 2d 1222, — U.S. App. D.C. —).

The trial judge did not exceed his discretion when he ruled that prosecutor would be allowed to impeach defendant, if he testified, with two earlier convictions for petit larceny. *Id.*

The decision of the trial court, rendered after hearing on admissibility, that 1959 conviction of one defendant for housebreaking and larceny and 1962 conviction of another defendant for attempted housebreaking could be brought out on cross-examination in robbery prosecution unless either defendant could satisfy court that since conviction he had led legally blameless life, was not an abuse of discretion. *United States* v. *J. L. Bailey et ano.* (1970, 426 F. 2d 1236, — U.S. App. D.C. —).

In robbery prosecution in this section, in which store detective testified that he saw defendant and codefendant enter store together and saw defendant bump shopper while codefendant opened pocketbook and remove wallet, the trial court did not abuse its discretion in admitting expert testimony on modus operandi of pickpockets. *United States* v. *O. J. Jackson* (1970, 425 F. 2d 574, — U.S. App. D.C. —).

It was not an abuse of discretion to deny impeachment of complaining witness in prosecution for robbery by reference to complaining witness' prior convictions for assault and rape affecting substantial rights of defendants where impeachment of the witness with three convictions for crimes of auto theft, robbery, and burglary, each crime having element of dishonesty, was permitted. *G. A. Davis, et al.* v. *United States* (1969, 409 F. 2d 453, 133 U.S. App. D.C. 167).

Bifurcated trial

Refusal of trial court to grant bifurcated trial sought on ground that defendant would defend on ground of want of criminal responsibility, was not reversible error where defense assured trial court that there was no defense on merits, and evidence to prove that defendant was one who robbed filling station was very strong. *United States* v. *R. A. Grimes* (1969, F. 2d 1119, 137 U.S. App. D.C. 184).

Concurrent sentences

Since concurrent sentences raised substantial question as to whether Congress intended Federal sentence to be cumulative to sentence for state violation for what was factually same offense, Federal sentence would be vacated without deciding question, inasmuch as this course will not result in overriding needs of government, and interests of justice will be served by avoiding substantial time and effort required for deciding question and by devoting limited resources of courts confronted with ever-mounting dockets to determination of issues that must be decided. *United States* v. *J. L. Hooper* (1970, 432 F. 2d 604, — U.S. App. D.C.—).

Consecutive sentences

It is proper to increase punishment where there have been convictions under the conventional robbery statute and under statute prohibiting assaults with a dangerous weapon by imposing consecutive sentences. *United States* v. *J. L. Suggs and C. Blair* (1967, 269 F. Supp. 732).

Defendant, who allegedly committed crime of assault with a dangerous weapon in parking lot of store or near door to store, and who allegedly committed a robbery in office of store could be given consecutive sentences upon being convicted for both crimes. *Id.*

Consecutive sentences for two separate offenses

The distinctions that assault and petit larceny are separate and distinct offenses requiring different elements of proof, and that one is a crime of general intent against the person, and the other a crime of specific intent against property, are no longer conclusive in determining the legality of consecutive sentences for two crimes committed in a single course of conduct. *G. Mahoney* v. *United States* (D.C. App. 1968, 243 A. 2d 684).

The compelling reasons which call for the application of the rule of lenity are absent in this case, and there is no substantial doubt Congress would have intended, in the discretion of the court, that consecutive punishment be imposed for historically separate offenses, against different societal interests, for which it has provided separate deterrents. *Id.*

Cross-examination

Record of prosecution for robbery and other offenses wherein defendant, who was denied bifurcated trial, claimed want of criminal responsibility and testified as to his state of mind did not show that the trial court, in its rulings on particular questions asked on cross-examination of defendant, substantially departed from court's ruling that it would allow cross-examination as to defendant's state of mind but not as to possible participation in offense. *United States* v. *R. A. Grimes* (1969, 421 F. 2d 1119, 137 U.S. App. D.C. 184).

Determination of sentence

Although defendant, who was found guilty of robbery by a jury, continued to assert his innocence at allocution, this fact could not properly be considered in determining sentence to be imposed. *V. E. Scott* v. *United States* (1969, 419 F. 2d 264, 135 U.S. App. D.C. 377).

The court's belief that defendant committed perjury on witness stand in denying participation in robbery with which he was charged could not properly be considered in determining sentence to be imposed. *Id.*

Due process

Defendant's claim that continuation of his robbery trial, after his codefendant changed his plea to guilty at completion of government's case and after trial judge, in questioning codefendant, elicited statement that implicated defendant, constituted denial of due process is not valid, either on theory that trial judge, having heard statement, would be prejudiced against defendant or on theory that jury must have realized that codefendant had changed his plea and must have been improperly influenced thereby in passing on defendant's guilt. *V. E. Scott* v. *United States of America* (1969, 419 F. 2d 264, 135 U.S. App. D.C. 377).

Evidence

Prosecution may not affirmatively use at trial defendant's testimony in support of motion to suppress evidence. *W. E. Pendergast* v. *United States* (1969, 416 F. 2d 776, 135 U.S. App. D.C. 20, cert. denied 89 S. Ct. 1782).

—— Sufficiency

Evidence in this case, including evidence of defendant's in-trial identification and testimonial references to pretrial forerunners, sustained conviction for robbery and assault with dangerous weapon. *United States* v. *T. McNair* (1970, 433 F. 2d 1132, — U.S. App. D.C. —).

In robbery prosecution of pickpocket who allegedly took wallet from purse of lady in line of people outside White House grounds waiting to gain entrance to observe children's annual Easter egg roll, evidence was sufficient to permit the jury to conclude beyond reasonable doubt that the defendant gained possession of the purse from the immediate actual possession of the lady. *R. T. Davis, Jr.* v. *United States* (1970, 433 F. 2d 1222, — U.S. App. D.C. —).

In this case in light of the evidence on issue of whether offense was product of mental illness, conviction for robbery of property belonging to United States, assault with a dangerous weapon and carrying dangerous weapon would be affirmed. *T. H. Adams* v. *United States* (1969, 413 F. 2d 411, 134 U.S. App. D.C. 137).

The evidence portrayed in a view most favorable to the Government, of defendant's presence at scene of crime, his slight association with actual perpetrator, and subsequent flight, did not sustain conviction for robbery. *J. L. Bailey* v. *United States* (1969, 416 F. 2d 1110, 135 U.S. App. D.C. 95).

In a robbery prosecution, government made out a case sufficient to go to the jury. *H. J. Macklin* v. *United States* (1969, 409 F. 2d 174, 133 U.S. App. D.C. 139).

Evidence was sufficient to sustain robbery conviction of pickpockets. *R. T. Davis, Jr., et ano.* v. *United States* (1969, 409 F. 2d 458, 133 U.S. App. D.C. 172).

Impeachment

Cross-examination of defendant during which the prosecution was permitted to develop that for some time prior to date of offense defendant had been absent from his military post without leave was improper, and the prejudice was magnified by the erroneous admission of government's rebuttal evidence as to defendant's absence

from military post. *United States* v. *W. A. Shumate et ano.* (1970, 429 F. 2d 777, — U.S. App. D.C. —).

In prosecution for, inter alia, robbery, where defendant testified, after being denied bifurcated trial, the trial court did err in permitting impeachment by showing prior offense of housebreaking, though it had occurred six years earlier and defendant had pleaded guilty to the housebreaking offense. *United States* v. *R. A. Grimes* (1969, 421 F. 2d 1119, 137 U.S. App. D.C. 184).

Where defense raises issue of whether evidence of defendant's prior convictions should be excluded from trial for purposes of impeaching defendant's credibility when he testifies, even though burden of persuasion remains on defendant, there is a duty on judge to make sufficient inquiry to inform himself on relevant considerations *L. B. Jones* v. *United States* (1968, 402 F. 2d 639, 131 U.S. App. D.C. 88)

On showing that defendant's testimony at his trial for robbery was essential because prosecution based whole case on delayed identification by complaining witness and therefore decision depended on credibility, trial judge's permitting evidence of defendant's prior conviction of assault to be introduced to impeach defendant's credibility was an abuse of discretion. *Id.*

Crime of assault is remotely, if at all, probative on issue of veracity of a defendant who testifies at his own trial. *Id.*

Included offense

Larceny is a necessarily included offense of robbery. *W. Walker, Jr.* v. *United States* (1969, 418 F. 2d 1116, 135 U.S. App. D.C. 280).

Instructions

The court properly instructed that the defendant's exclusive possession of property recently stolen from robbery victims was a basis for permissible inference that defendant was one of the robbers unless that possession was satisfactorily explained by the evidence even though prosecution had eyewitness testimony regarding the defendant's acquisition of the property which was in conflict with the explanatory testimony produced by defense. *W. E. Pendergast* v. *United States* (1969, 416 F. 2d 776, 135 U.S. App. D.C. 20, cert. denied 89 S. Ct. 1782).

Intent to commit other crime

There is no statutory requirement for either robbery or assault with a dangerous weapon, that there be a specific intent to commit the other. *United States* v. *J. L. Suggs and C. Blair* (1967, 269 F. Supp. 732).

Limited affirmance

In this case where the evidence was sufficient to sustain a conviction of unauthorized use of automobile but the court had doubts as to its sufficiency to support convictions for robbery and for transporting stolen vehicle across state line in violation of Dyer Act, sentence of youthful offenders under Federal Youth Corrections Act would be affirmed in interest of justice limited to a conviction of unauthorized use of automobile. *C. S. Kee and W. J. Johnson* v. *United States* (1969, 418 F. 2d 465, 135 U.S. App. D.C. 249).

Merger of offenses

Convictions of appellant on the three charges of entering with intent to rob were not permissible where appellant was convicted of actual taking or robbery, since those offenses in the circumstances merged into completed robberies. *B. A. Bryant* v. *United States* (1969, 417 F. 2d 555, 135 U.S. App. D.C. 138).

Model Instruction

Model instructions was proposed by the court for use in robbery and larceny cases. *W. E. Pendergast* v. *United States* (1969, 416 F. 2d 776, 135 U.S. App. D.C. 20, cert. denied 89 S. Ct. 1782).

Photographic identification

In a prosecution for robbery and assault with a dangerous weapon, where robbery victim on morning after robbery was shown 15 photographs depicting males of various ages, including one photograph of defendant that was not highlighted so as to prompt its selection and victim identified defendant's photograph, which was sixth photograph shown to him, as that of robber and remained firm in such identification after examining remaining photographs, such identification did not deny due process and did not vitiate subsequent in-court identification. *United States* v. *E. L. Hamilton* (1969, 420 F. 2d 1292, 137 U.S. App. D.C. 89).

There was a serious and irreconcilable breach of due process of law in view of circumstances surrounding photographic identification of defendants, including the fact that one robbery victim was shown only the photographs of the four suspects, that those photographs contained police markings, and that there was no necessity whatsoever for a photographic identification since the suspects had been apprehended, established that the identification procedure was "so impermissibly suggestive as to give rise to a very substantial likelihood of irreparable misidentification". *United States* v. *S. Washington, Jr., et al.* (1968, 292 F. Supp. 284).

Evidence, including the fact that the defendants were not brought to trial until more than two years after the robbery, and that the robbery victims had never seen any of the individuals involved in the crime prior to the event, established that an in-court identification of the defendants by the robbery victims would not have been arrived at independent of improper photographic identifications secured by the police. *Id.*

Pickpocketing

"Pickpocketing," or robbery by stealth, is a crime which, by its very nature, is difficult of proof; unexplained possession plus suspecious circumstances can be submitted to the sound discretion of the jury. *R. T. Davis, Jr.* v. *United States* (1970, 433 F. 2d 1222, — U.S. App. D.C. —).

Prejudicial error

In this case, assuming that failure of the trial judge to inform defendant's counsel of larceny charge before he summed up constituted error, where defendant was indicted for robbery and assault with a deadly weapon, however, that failure lacked the prejudice necessary to constitute reversible error where, inter alia, defendant's admission in open court established his intention and his attempt to trick complainants, so that damage was done when defendant took the stand and it was not likely that a variation in summation would have changed the verdict. *W. Walker, Jr.* v. *United States* (1969, 418 F. 2d 1116, 135 U.S. App. D.C. 280).

Pretrial hearing

Where a victim tentatively identified the defendant from a photograph shown him about a month after the crime of robbery but police waited seven months thereafter before arresting the defendant though defendant was living at his mother's apartment and working, as police were aware, a few blocks from his home, the defendant was entitled to a full pretrial hearing in which the government would be given an opportunity to justify seven-month delay in defendant's arrest and in which the defendant would be given opportunity to show extent to which delay prejudiced him. *L. B. Jones* v. *United States* (1968, 402 F. 2d 639, 131 U.S. App. D.C. 88).

Probable cause

Victim's physical condition and his positive identification of defendant as participant in robbery were sufficient to give arresting officer probable cause to arrest defendant. *W. E. Pendergast* v. *United States* (1969, 416 F. 2d 776, 135 U.S. App. D.C. 20, cert. denied 89 S. Ct. 1782).

Probable cause for arrest

In a case where police officers in plain clothes saw two defendants who were known to the officers to be pickpockets get onto bus, and the first defendant bumped into the victim, and second defendant brushed up against the victim, and officers arrested the second defendant, and search disclosed keycase of the victim, there was probable cause for arrest of the second defendant, and district court properly denied motion of defendants to suppress the keycase in robbery prosecution. *R. T. Davis, Jr. et ano.* v. *United States* (1969, 409 F. 2d 458, 133 U.S. App. D.C. 172).

Question for Jury

In prosecution for robbery and assault with dangerous weapon, whether the defendant was one of holdup men in robbery of shoe store was question for jury. *United*

States v. *J. E. York* (1969, 426 F. 2d 1191, — U.S. App. D.C. —).

Release on personal recognizance

Appellant, who was convicted of robbery and assault with a deadly weapon, and whose appeal presented a substantial claim that he was wrongfully identified, was ordered released on personal recognizance on certain enumerated conditions which were so structured as to allow for a maximum amount of supervision over appellant while still allowing for his freedom from incarceration. *W. Banks* v. *United States* (1969, 414 F. 2d 1150, 134 U.S. App. D.C. 254).

Reversible error

Question regarding defendant's financial condition in prosecution for robbery, though error, did not require reversal where one defendant did not object at the trial and other defendant did not object that it resulted in prejudice until after line of questioning had been completed. *G. A. Davis, et al.* v. *United States* (1969, 409 F. 2d 453, 133 U.S. App. D.C. 167).

Review

Issues as to whether trial court erred in permitting prosecutor to impeach defendant with cross-examination respecting prior conviction of assault and in permitting prosecutor to impeach defense witness with cross-examination respecting her chastity would not be noticed for the first time on appeal from conviction for assault with intent to commit robbery. *C. E. Green* v. *United States* (1968, 397 F. 2d 643, 130 U.S. App. D.C. 82).

—— Remand

Since counsel for defendant, convicted of robbery and assault with a dangerous weapon, was not appointed until almost one year after offense, counsel was appointed slightly more than one month before trial, although counsel's failure to appear on date case was first set was allegedly due to misunderstanding case was not removed from ready calendar, and it was alleged that counsel had inaequate time in which to obtain specified physical evidence and interview specified witnesses, reviewing court remanded case to trial court for determination whether new trial should be granted on ground of uneffective assistance of counsel. *United States* v. *W. D. Weaver* (1970, 422 F. 2d 711, 137 U.S. App. D.C. 274).

Revocation of probation

Where trial court had imposed a suspended sentence conditioned upon satisfactory completion of three years on probation after conviction of robbery, such probation was revoked on request of United States Probation Officer and on appeal the Court of Appeals remanded the case for preparation of statement of evidence, reporter's notes of hearing being unavailable, and parties were unable to reconstruct such statement and a de novo hearing was held and sentencing judge reaffirmed the revocation of probation, the revocation was not an abuse of discretion. *T. Hurt* v. *United States* (1966, 374 F. 2d 283, 126 U.S. App. D.C. 69).

§ 22–2902. Attempt to commit robbery.

NOTES TO DECISIONS

Arrest without warrant

A police officer, who received a report from man that defendant appeared to have robbed a girl and started to walk toward defendant, who called a scout car for assistance when the defendant began running from officer, had probable cause for a warrantless arrest of defendant. *A. B. Clarke* v. *United States* (D.C. App. 1969, 256 A. 2d 782).

Evidence—Sufficiency

Evidence, including testimony of girl friend of one defendant as to incriminating statements which both defendants made to her, sustained convictions for felony murder and for attempted robbery. *A. Calloway and T. L. S. McCowey* v. *United States* (1968, 399 F. 2d 1006, 130 U.S. App. D.C. 273).

Chapter 31.—TRESPASS—INJURIES TO PROPERTY

§ 22–3102. Unlawful entry on property.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–581.

NOTES TO DECISIONS

Bona fide entry

Person who enters building for good purpose and with bona fide belief of his right to enter is not guilty of an unlawful entry in violation of District of Columbia statute. *T. J. McGloin* v. *United States* (D.C. App. 1967, 232 A. 2d 90).

Concurrent sentences

Where defendants received concurrent sentences in prosecution for possession of narcotics, possession of implements of crime, unlawful entry and narcotics vagrancy and evidence was sufficient to support conviction of possession of narcotics and possession of implements of crime, District of Columbia Court of Appeals would not pass upon sufficiency of evidence to support other convictions. *S. Keith, R. L. Payne and T. J. Walker* v. *United States* (D.C. App. 1967, 232 A. 2d 92).

Construction

In this case, the court held that the conduct of defendants charged with unlawful entry in refusing to quit steps of United States capitol after being ordered to do so by chief of capitol police and in reading names of Vietnam war dead in ordinary speaking voice did not come within prohibition of Capitol Grounds statute as interpreted. *United States* v. *J. Nicholson et al.* (D.C. App. 1970, 263 A. 2d 56).

Custodial interrogation

Questions addressed to three defendants by arresting officers seeking an explanation for defendants' being in condemned house were noncoercive and not "custodial interrogation" within rule of Miranda v. State of Arizona. *S. Keith, R. L. Payne and T. J. Walker* v. *United States* (D.C. App. 1967, 232 A. 2d 92).

Duty to arrest

When police detectives saw narcotics paraphernalia in possession of defendants, officers were under statutory duty to arrest the offenders immediately. *S. Keith, R. L. Payne and T. J. Walker* v. *United States* (D.C. App. 1967, 232 A. 2d 92).

Elements of offense

One of the necessary elements for unlawful entry conviction is proof that the defendant entered or attempted to enter premises without lawful authority against the will of its lawful occupant. *W. H. Dent* v. *United States* (D.C. App. 1970, 271 A. 2d 699).

Defendant who was found wandering by police officer inside of four-unit apartment building and on the roof and fire escape thereof could properly be convicted of unlawful entry under District of Columbia statute without showing that owner had not given an express warning that he should stay out of building. *T. J. McGloin* v. *United States* (D.C. App. 1967, 232 A. 2d 90).

Evidence—Admissibility

Prosecuting witness' testimony, in prosecution under this section, that she had had conversation with defendant as to whether or not he was entitled to go into her apartment on occasion when he had come in and beaten her up was admissible in that such testimony, along with her direct testimony that she had not given defendant permission to enter premises, bore directly upon defendant's lack of lawful authority to enter witness' apartment. *W. H. Dent.* v. *United States* (D.C. App. 1970, 271 A. 2d 699).

Where defendants' arrest for narcotics violations was legal, narcotics paraphernalia seized at time of the arrest was properly admitted in defendants' joint trial for narcotics violations. *S. Keith, R. L. Payne and T. J. Walker* v. *United States* (D.C. App. 1967, 232 A. 2d 92).

—— Sufficiency

Evidence, including evidence as to exclusive control or possession of television in defendant, sustained convic-

tion for unlawful entry and petit larceny. *J. L. Benboro* v. *United States* (D.C. App. 1967, 227 A. 2d 772).

Evidence supported conviction for unlawful entry. *L. Perry* v. *United States* (D.C. App. 1967, 230 A. 2d 721).

Evidence, which showed that appellant was found in parts of the airlines' offices which were not open to the public and where he had no right to be, sustained conviction for unlawful entry. *V. J. Bond, Jr.* v. *United States* (D.C. App. 1967, 233 A. 2d 506).

Ineffective assistance of counsel

Fact that new counsel was appointed not more than 60 minutes before trial did not amount to ineffective assistance of counsel of defendant charged with simple assault, unlawful entry and petit larceny where no continuance was requested and defendant announced he was ready for trial, factual situation was not so complex as to necessitate any extensive investigation and there were no witnesses for the defense who could have been called, new counsel was experienced and diligent and made no claim that he was hampered by appointment shortly before trial. *S. A. Tuttle* v. *United States* (D.C. App. 1968, 238 A. 2d 590).

Information—Sufficiency of

Defendants, who were arrested after refusing to move out of corridor in House wing of Capitol building when ordered to do so by Capitol police, were entitled to know with certainty offense with which they were charged and possible penalty threatened and were entitled to definite reference to the law which they had allegedly violated, and thus where, notwithstanding request of defense, no one had given citation of statute under which prosecution was being had, other than statement of prosecutor that two sections were involved, convictions under section carrying lighter sentence, as requested by prosecutor, were required to be set aside. *D. Smith et al.* v. *District of Columbia* (1967, 387 F. 2d 233, 128 U.S. App. D.C. 275).

Lawful arrest

Police officer who observed defendant in hallway of building and, upon questioning defendant, received no logical explanation for his presence and who thereupon learned from building manager that the building was usually kept locked and the public was not invited to enter had sufficient ground to arrest defendant for unlawful entry committed in officer's presence, and after that valid arrest, the right to search defendant naturally followed. *W. C. Best* v. *United States* (D.C. App. 1968, 237 A. 2d 825).

Lesser included offense rule

Lesser included offense rule was properly applied when court instructed jury that the offense of larceny from interstate commerce, for which offense appellant was charged, included the lesser offense of taking property without right, an offense for which appellant was not charged, and since sentence for taking property without right ran concurrently with sentence for unlawful entry, court need not consider claim of error predicated on the instruction. *W. E. Humphrey* v. *United States* (D.C. App. 1967, 236 A. 2d 438).

Prosecution by indictment

Prosecution by indictment for unlawful entry was not constitutionally required where defendant was subject to imprisonment for more than one year when sentenced under the Federal Youth Corrections Act. *A. E. Harvin* v. *United States* (D.C. App. 1968, 245 A. 2d 307).

Review—Remand

In a case in which guilty verdict was ambiguous for failure to state whether it referred to offense of housebreaking or to offense of unlawful entry, the court held that remand for new trial was appropriate remedy. *K. F. Glenn* v. *United States* (1969, 420 F. 2d 1323, 137 U.S. App. D.C. 120).

Verdict

Where defendant was charged with housebreaking and jury was instructed on elements of both housebreaking and on lesser included offense of unlawful entry and returned one word verdict of "guilty" without specifying to which offense this finding related, the verdict is ambiguous and conviction for housekeeping cannot be founded upon it. *K. F. Glenn* v. *United States* (1969, 420 F. 2d 1323, 137 U.S. App. D.C. 120).

§ 22–3105. Placing explosives with intent to destroy or injure property.

Whoever places, or causes to be placed, in, upon, under, against, or near to any building, car, vessel, monument, statue, or structure, gunpowder or any explosive substance of any kind whatsoever, with intent to destory, throw down, or injure the whole or any part thereof, although no damage is done, shall be punished by a fine not exceeding one thousand dollars and by imprisonment for not less than two years or more than ten years. (Mar. 3, 1901, ch. 854, § 825a, as added Mar. 3, 1905, 33 Stat. 1033, ch. 1461; Dec. 27, 1967, Pub. L. 90–226, § 607, title VI, 81 Stat. 739.)

AMENDMENT

1967—Section 607, Act Dec. 27, 1967, Pub. L. 90–226, amended section by striking out "or by imprisonment not exceeding ten years.", and inserting in lieu, "and by imprisonment for not less than two years or more than ten years."

SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967

Section 1101, Act Dec. 27, 1967, Pub. L. 90–226, provided:

Whoever, prior to the date of enactment of this Act, [Pub. L. 90–226] commits any act or engages in any conduct which constitutes an offense under provision of law amended by this Act, [Amendments of sections 4–140, 15–714, 15–716, 22–501, 22–703, 22–1513, 22–1801, 22–2001, 22–2901, 22–3105, 22–3201, 22–3202, 23–610, 23–901, 23–903, 24–301 and enactments of sections 4–140a, 4–150a and 22–1122, and amendments of 18 U.S.C. 4122, 5024 and 5025] shall be sentenced in accordance with the law in effect on the date he commits such acts or engages in such conduct.

SEPARABILITY OF PROVISIONS

Section 1102, Act Dec. 27, 1967, Pub. L. 90–226, provided:

If any provision of or any amendment made by this Act [Pub. L. 90–226; for provisions and amendments made by this Act, see enumeration in note above, under heading, "Sentence for offenses committed prior to Dec. 27, 1967."] or the application thereof to any person or circumstance is held invalid, the other provisions of or other amendments made by this Act and the application of such provisions and amendments to other persons or circumstances shall not be affected thereby.

§ 22–3111. Disorderly conduct in public buildings or grounds—Injury to or destruction of United States property.

Any person guilty of disorderly and unlawful conduct in or about the public buildings and public grounds belonging to the United States within the District of Columbia, or who shall wilfully injure the buildings or shrubs, or shall pull down, impair, or otherwise injure any fence, wall, or other inclosure, or shall injure any sink, culvert, pipe, hydrant, cistern, lamp, or bridge, or shall remove any stone, gravel, sand, or other property of the United States, or any other part of the public grounds or lots belonging to the United States in the District of Columbia, shall be fined not more than $500, or imprisoned not more than six months, or both. (July 29, 1892, 27 Stat. 325, ch. 320, § 15; Oct. 20, 1967, Pub. L. 90–108, § 2, 81 Stat. 277.)

AMENDMENTS

1967—Section 2, Pub. L. 90–108, amended section by striking out "shall, upon conviction thereof, be fined not more than $50." and inserted in lieu thereof "shall be fined not more than $500, or imprisoned not more than six months, or both."

PROSECUTION OF PRIOR VIOLATIONS NOT AFFECTED BY OCT. 20, 1967, AMENDMENT. APPLICABILITY OF PUB. L. 90–108 TO VIOLATIONS OCCURRING AFTER OCT. 20, 1967

Pub. L. 90–108, section 3 provided as follows:

"Prosecutions for violations of sections 9–118 to 9–126, 9–127 to 9–132 and of section 22–3111 occurring prior to the enactment of these amendments [Amendments to sections 9–118, 9–123, 9–125, 9–132 and 22–3111] shall not be affected by these amendments or abated by reason thereof. The provisions of this Act [Amendments to sections 9–118, 9–123, 9–125, 9–132 and 22–3111] shall be applicable to violations occurring after its enactment."

CODIFICATION

This section contains the last part of act July 29, 1892. The first part of § 15 of the act appears herein as § 4–120.

Section is also classified to 40 U.S.C. § 101.

NOTES TO DECISIONS

Information—Sufficiency of

Information charging defendant arrested during peace demonstration with disorderly conduct in that she did with intent to provoke breach of peace congregate with others on public street and on grounds of United States Capitol, and did refuse to move, which failed to specify which of several potentially applicable statutes was basis of prosecution, was insufficient. *D. Feeley* v. *District of Columbia* (1967, 387 F. 2d 216, 128 U.S. App. D.C. 258).

Defendants, who were arrested after refusing to move out of corridor in House wing of Capitol building when ordered to do so by Capitol police, were entitled to know with certainty offense with which they were charged and possible penalty threatened and were entitled to definite reference to the law which they had allegedly violated, and thus where, notwithstanding request of defense, no one had given citation of statute under which prosecution was being had, other than statement of prosecutor that two sections were involved, convictions under section carrying lighter sentence, as requested by prosecutor, were required to be set aside. *D. Smith et al.* v. *District of Columbia* (1967, 387 F. 2d 233, 128 U.S. App. D.C. 275).

§ 22–3121. Obstructing public highway.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–3122.

Chapter 32.—WEAPONS

Sec.

22–3215a. Manufacture, transfer, use, possession or transportation of molotov cocktails, or other explosives for unlawful purposes, prohibited—Definitions—Penalties.

CROSS REFERENCE

Federal firearms control laws, see 18 U.S.C. §§ 921 to 928. Unlawful possession or receipt or transportation in commerce of firearms, see title 18 U.S.C. App. 1201 et seq.

§ 22–3201. Possession, sale, transfer, and use of dangerous weapons—Definition.

* * * * *

"Crime of violence," as used in this chapter, means any of the following crimes, or an attempt to commit any of the same, namely: Murder, manslaughter, rape, mayhem, maliciously disfiguring another, abduction, kidnaping, burglary, robbery, housebreaking, larceny, any assault with intent to kill, commit rape, or robbery, assault with a dangerous weapon, or assault with intent to commit any offense punishable by imprisonment in the penitentiary. (July 8, 1932, 47 Stat. 650, ch. 465, § 1; Dec. 27, 1967, Pub. L. 90–226, § 501, title V, 81 Stat. 736.)

AMENDMENT

1967—Section 501, Act Dec. 27, 1967, Pub. L. 90–226 amended the definition "Crime of violence" by adding "robbery" thereto.

SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967

Section 1101, Act Dec. 27, 1967, Pub. L. 90–226, provided:

Whoever, prior to the date of enactment of this Act [Pub. L. 90–226], commits any act or engages in any conduct which constitutes an offense under provision of law amended by this Act, [Amendments of sections 4–140, 15–714, 15–716, 22–501, 22–703, 22–1513, 22–1801, 22–2001, 22–2901 22–3105, 22–3201, 22–3202, 23–610, 23–901, 23–903, 24–301, and enactments of sections 4–140a. 4–150a, and 22–1122, and amendments of 18 U.S.C. 4122, 5024, and 5025] shall be sentenced in accordance with the law in effect on the date he commits such acts or engages in such conduct.

SEPARABILITY OF PROVISIONS

Section 1102, Act Dec. 27, 1967, Pub. L. 90–226, provided:

If any provision of or any amendment made by this Act [Pub. L. 90–226; for provisions and amendments made by this Act, see enumeration in note above under hearing, "Sentence for offenses committed prior to Dec. 27, 1967."] or the application thereof to any person or circumstance is held invalid, the other provisions of or other amendments made by this Act and the application of such provisions and amendments to other persons or circumstances shall not be affected thereby.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3203, 24–203.

§ 22–3202. Committing crime when armed—Added punishment.

(a) Any person who commits a crime of violence in the District of Columbia when armed with or having readily available any pistol or other firearm (or imitation thereof) or other dangerous or deadly weapon (including a sawed-off shotgun, shotgun, machinegun, rifle, dirk, bowie knife, butcher knife, switchblade knife, razor, blackjack, billy, or metallic or other false knuckles)—

(1) may, if he is convicted for the first time of having so committed a crime of violence in the District of Columbia, be sentenced, in addition to the penalty provided for such crime, to a period of imprisonment which may be up to life imprisonment; and

(2) shall, if he is convicted more than once of having so committed a crime of violence in the District of Columbia, be sentenced, in addition to the penalty provided for such crime, to a minimum period of imprisonment of not less than five years and a maximum period of imprisonment which may not be less than three times the minimum sentence imposed and which may be up to life imprisonment.

(b) Where the maximum sentence imposed under this section is life imprisonment, the minimum sentence imposed under subsection (a) may not exceed fifteen years' imprisonment.

(c) Any person sentenced under subsection (a) (2) of this section may be released on parole in accordance with the Act of July 15, 1932 (chapter 2 of title 24 of the District of Columbia Code), at any time after having served the minimum sentence imposed under that subsection.

(d) (1) Chapter 402 of title 18 of the United States Code (Federal Youth Corrections Act) shall not apply with respect to any person sentenced under paragraph (2) of subsection (a).

(2) The execution or imposition of any term of imprisonment imposed under paragraph (2) of subsection (a) may not be suspended and probation may not be granted.

(e) Nothing contained in this section shall be construed as reducing any sentence otherwise imposed or authorized to be imposed.

(f) No conviction with respect to which a person has been pardoned on the ground of innocence shall be taken into account in applying this section. (July 8, 1932, 47 Stat. 650, ch. 465, § 2; Dec. 27, 1967, Pub. L. 90–226, § 605, title VI, 81 Stat. 737; July 29, 1970, Pub. L. 91–358, § 205, title II, 84 Stat. 600.)

AMENDMENTS

1970—Section 205 of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

1967—Section 605, Act Dec. 27, 1967, Pub. L. 90–226, amended section to read as set out in supplements I, II, and III of the 1967 edition of the code. For provisions of section prior to this amendment, see main edition of the code.

APPLICABILITY OF 1970 AMENDMENT

Section 901(b)(3) of Pub. L. 91–358, provided as follows: (3) The amendments made by sections 201 [sections 22–104 and 22–104a] and 205 [Sections 22–3202 and 22–3213] of this Act shall apply with respect to any person who commits an offense after the effective date of this Act. [For effective date see note preceding § 11–101.]

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967

Section 1101, Act Dec. 27, 1967, Pub. L. 90–226, provided:

Whoever, prior to the date of enactment of this Act, [Pub. L. 90–226] commits any act or engages in any conduct which constitutes an offense under provision of law amended by this Act, [Amendments of sections 4–140, 15–714, 15–716, 22–501, 22–703, 22–1513, 22–1801, 22–2001, 22–2901, 22–3105, 22–3201, 22–3202, 23–610, 23–901, 23–903, 24–301 and enactments of sections 4–140a, 4–150a and 22–1122, and amendments of 18 U.S.C. 4122, 5024 and 5025] shall be sentenced in accordance with the law in effect on the date he commits such acts or engages in such conduct.

SEPARABILITY OF PROVISIONS

Section 1102, Act Dec. 27, 1967, Pub. L. 90–226, provided:

If any provision of or any amendment made by this Act [Pub. L. 90–226; for provisions and amendments made by this Act, see enumeration in note above, under heading, "Sentence for offenses committed prior to Dec. 27, 1967."] or the application thereof to any person or circumstance is held invalid, the other provisions of or other amendments made by this Act and the application of such provisions and amendments to other persons or circumstances shall not be affected thereby.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3203, 24–203.

§ 22–3203. Unlawful possession of a pistol.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3207, 22–3208, 22–3210, 24–203.

NOTES TO DECISIONS

Assistance of counsel

The record did not sustain the claim of ineffective assistance of counsel who was a defense attorney with many years of experience and who presented all substantial defenses, made appropriate motions and objections, attempted to suppress the evidence on the charge of unlawful possession of a pistol after conviction of a felony, and was able to obtain acquittal on a charge of threats to do bodily harm and directed verdict in defendant's favor on a charge of assault by threatening in a menacing manner. *I. Gressette* v. *United States* (D.C. App. 1969, 256 A. 2d 418).

Double jeopardy

In a case where a defendant waived his right to jury trial and the government entered nolle prosequi after witnesses had been sworn, but before the first witness began to testify, jeopardy did not attach and did not bar subsequent prosecution for carrying pistol without a license. *C. R. Newman* v. *United States* (1969, 410 F. 2d 259, 133 U.S. App. D.C. 271).

Where defendant was charged by information with violation of statute which makes it unlawful for one to own or have in his possession a pistol if previously convicted of possession of a prohibited weapon, and before any witness took stand prosecuting attorney announced that Government could not go forward with charge and would nolle prosse it and bring new charge of carrying a pistol without a license, plea of double jeopardy was not a valid plea in new prosecution because the two informations charged separate and distinct offenses. *C. R. Newman* v. *United States* (D.C. App. 1968, 239 A. 2d 152).

Subject of search

Under the circumstances of this case, it was not unreasonable for officers to seize pistol which, as convicted felon, defendant was forbidden to possess, incidental to authorized search of his apartment for narcotics, in absence of showing that presence of pistol on premises was attributable to eight-day delay in execution of search warrant. *J. E. Curtis* v. *United States* (D.C. App. 1970, 263 A. 2d 653).

§ 22–3204. Carrying concealed weapons.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3203, 22–3205.

NOTES TO DECISIONS

Acquiescence in plea of insanity

Where petitioner had not himself sought introduction of insanity defense at his trial and had not acquiesced in assertion of that defense, his commitment to hospital for the mentally ill following his acquittal by reason of insanity was not authorized and he was entitled to habeas corpus. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

Appeal and error

Record in prosecution for carrying a pistol without a license in violation of this section supported finding that defendant, to whom Miranda warnings were read by policeman from standard police form and who was given the form to read in police station before being questioned, but who was not asked if he understood contents of form, had been sufficiently informed of his right to remain silent and to counsel. *M. J. Brewster* v. *United States* (D.C. App. 1970, 271 A. 2d 409).

In view of the overwhelming evidence that the particular address claimed by defendant to be his dwelling house was not his dwelling house, any error with respect to whether defendant waived any of his constitutional rights to remain silent and to counsel before being questioned as to his residence was harmless. *Id.*

Where record showed that defendant was found in possession of concealed weapon and his own testimony on trial confirmed such fact, absence of indication that defendant made informed decision, after appropriate advice, to proceed with joint counsel did not require reversal of conviction for carrying concealed weapon. *F. J. Ford* v. *United States of America* (1967, 379 F. 2d 123, 126 U.S. App. D.C. 346).

Bifurcated trial

Refusal of trial court to grant bifurcated trial, sought on ground that defendant would defend on ground of want of criminal responsibility, was not reversible error where defense assured trial court that there was no defense on merits, and evidence to prove that defendant was one who robbed filling station was very strong. *United States* v. *R. A. Grimes* (1969, 421 F. 2d 1119, 137 U.S. App. D. C. 184).

Burden of proving exception

Defendant had burden of bringing himself within statutory exception to offense charged rather than that of the prosecution to negative it. *M. L. Williams* v. *United States* (D.C. App. 1968, 237 A. 2d 539).

Consent to defense of insanity

Finding that petitioner himself sought introduction of insanity defense at his trial was clearly erroneous in view of evidence, including evidence that new counsel retained by petitioner's mother did not confer with petitioner prior to filing motion for pretrial mental examination and that petitioner did not even know new counsel's identity when he saw him at hearing on the motion and thought that he was still being represented by assigned counsel. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

Finding that petitioner evidenced his acquiescence in insanity defense by waiting almost four years to attack validity of his mandatory commitment to hospital for the mentally ill was not warranted in light of petitioner's apparent disabilities, including his lack of financial means and learning in the law and the likelihood that he had been suffering from some mental illness. *Id.*

Constitutional rights

Because police questioning concerning defendant's address could be incriminating in view of charge of violating this section prohibiting carrying an unlicensed pistol except in one's dwelling house, Fifth Amendment applies to questioning concerning defendant's address and the required constitutional warnings as to right to remain silent and right to counsel are also applicable. *M. J. Brewster* v. *United States* (D.C. App. 1970, 271 A. 2d 409).

Failure to show that defendant was advised of constitutional rights at time of arrest did not entitle him to reversal of conviction for carrying deadly weapon, absent introduction of any statements made by him. *W. C. Best* v. *United States* (D.C. App. 1968, 237 F. 2d 825).

Constitutionality

Statute prohibiting carrying of concealed deadly or dangerous weapon is not unconstitutionally vague or indefinite in its prohibition of objects which are not ordinarily carried about person for personal convenience or for a legitimate purpose. *J. L. Scott* v. *United States* (D.C. App. 1968, 243 A. 2d 54).

Statute which makes it an offense to carry a pistol without a license was not so clearly unconstitutional as a violation of defendant's constitutional right to keep and bear arms that it should have been ruled upon by trial court despite defendant's failure to raise the point in trial court, and, in such circumstances, the Court of Appeals would decline to exercise its discretion to consider the constitutional question raised for first time on appeal. *M. L. Williams* v. *United States* (D.C. App. 1968, 237 F. 2d 539).

Continuance

The granting or refusal of a continuance is largely left to discretion of the trial judge, and his decision will not be disturbed without a clear showing of abuse in the exercise of that discretion. *W. E. Smith* v. *United States* (D.C. App. 1967, 235 A. 2d 574).

Dangerous purpose

Instrument may be dangerous in its ordinary use as contemplated by its design and construction, or where the purpose of carrying the object, under the circumstances, is its use as a weapon. *J. L. Scott* v. *United States* (D.C. App. 1968, 243 A. 2d 54).

Statute prohibiting carrying of concealed deadly or dangerous weapon does not prohibit carrying of knives for a legitimate purpose. *Id.*

Statute prohibiting carrying of concealed deadly or dangerous weapon outlaws carrying of otherwise useful object where the surrounding circumstances, such as the time and place the defendant was found in possession of such instrument, or the alteration of the object, indicate that the possessor would use the instrument for a dangerous purpose. *Id.*

Dangerous weapon

The test of whether the object being carried by an accused is a dangerous weapon is whether the purpose of carrying the object, under circumstances, is its use as weapon. *A. B. Clarke* v. *United States* (D.C. App. 1969, 256 A. 2d 782)

In a case where the defendant was carrying the razor in company of an armed companion in a crowded, commercial area of the city in late afternoon, and defendant was apprehended after he ran up an alley at approach of a police officer investigating citizen's report concerning him, jury was apprised of circumstances sufficiently probative to allow them to conclude beyond a reasonable doubt that razor was being carried as deadly or dangerous weapon. *Id.*

Under certain circumstances a hawk-bill knife can be a "dangerous weapon" within statute. *W. C. Best* v. *United States* (D.C. App. 1968, 237 A. 2d 825).

Evidence supported finding that hawk-bill knife found in pocket of defendant who was unable to explain his presence in hallway of building which was usually kept locked and which public was not invited to enter constituted a "dangerous weapon" within statute. *Id.*

Deadly or dangerous weapon

A "deadly or dangerous weapon" is one which is likely to produce death or great bodily injury by the use made of it. *J. L. Scott* v. *United States* (D.C. App. 1968, 243 A. 2d 54).

Evidence that knife taken from defendant in movie theater was ten inches long when extended with blade slightly more than four and one-half inches from shank to tip supported finding that knife was a deadly weapon within meaning of statute prohibiting carrying of concealed deadly or dangerous weapon. *Id.*

Deadly weapon

Hawk-billed linoleum clasp knife with three and a half-inch blade altered to open 270 degrees was properly determined to be a "deadly weapon" and was unlawfully carried. *L. Perry* v. *United States* (D.C. App. 1967, 230 A. 2d 721).

Delay in charging defendant with felony

The United States Attorney has responsible role in implementing possibility that crimes of violence may be deterred by visiting severe punishment upon convicted felon later found carrying deadly weapon. *R. W. Epperson* v. *United States* (1967, 371 F. 2d 956, 125 U.S. App. D.C. 303).

The courts will not skimp in affording prosecutor opportunity to obtain and appraise prior record of accused in order to determine whether to seek felony conviction for carrying dangerous weapon without license. *Id.*

Double jeopardy

Where defendant was charged by information with violation of statute which makes it unlawful for one to own or have in his possession a pistol if previously convicted of possession of a prohibited weapon, and before any witness took stand prosecuting attorney announced that Government could not go forward with charge and would nolle prosse it and bring new charge of carrying a pistol without a license, plea of double jeopardy was not a valid plea in new prosecution because the two informations charged separate and distinct offenses. *C. R. Newman* v. *United States* (D.C. App. 1968, 239 A. 2d 152).

Evidence—Admissibility

Where defendant was acting in a suspicious manner outside store, officers who were at store to investigate earlier robbery acted reasonably in asking defendant for identification and in seizing pistol as defendant disclosed its presence in the form of a bulge under his waistband while pulling his coat aside in an apparent effort to reach toward his rear pocket and, therefore, the pistol was admissible in prosecution under this section. *United States* v. *L. T. Lee* (D.C. App. 1970, 271 A. 2d 566).

Although there was ample testimony by two police officers of possession of a weapon by appellant without a license in violation of District of Columbia code, this did not render harmless identification and display in front of the jury, of three dangerous weapons which were taken from appellant's companions at time they were arrested but which were not charged to appellant's possession. *F. Macklin, Jr.* v. *United States* (1969, 410 F. 2d 1046, 133 U.S. App. D.C. 347).

Absent plain error, defendant's failure to voice objection to introduction of knife against him in prosecution for carrying deadly weapon precluded assertion on appeal that admission of the knife was error. *W. C. Best* v. *United States* (D.C. App. 1968, 237 A. 2d 825).

Photographs of fingerprints discovered at scene of crime and identified as defendant's on basis of prints of defendant retained after prior conviction, did not render them inadmissible, on ground that his conviction for earlier crime had been set aside pursuant to provisions of Youth Corrections Act. *M. C. Stevenson and E. S. Borum* v. *United States* (1967, 380 F. 2d 590, 127 U.S. App. D.C. 43).

—— Sufficiency

In this case there was adequate evidence to support convictions of assault and carrying a dangerous weapon. *United States* v. *L. White* (1970, 429 F. 2d 711, — U.S. App. D.C. —).

The court held the evidence sustained finding that defendant, who was charged under this section with carrying pistol without a license, had requisite knowledge and control of weapon found between backrest and seat to left of where defendant had been sitting in automobile. *L. R. Kenhan* v. *United States* (D.C. App. 1970, 263 A. 2d 253).

Knowledge of presence of pistol could be reasonably inferred from fact that one or two inches of butt of pistol were sticking out from between backrest and seat to left of where defendant had been sitting in automobile. *Id.*

Evidence was sufficient to sustain a conviction for carrying a pistol without a license, although the government did not offer any direct proof of defendant's knowledge of gun. *L. L. Powell* v. *United States* (D.C. App. 1968, 246 A. 2d 641).

Officer's independent testimony with respect to defendant's possession of gun to which no objection was made was sufficient to support defendant's conviction for carrying pistol without a license. *L. G. Lee* v. *United States* (D.C. App. 1968, 242 A. 2d 212).

Evidence supported conviction for carrying dangerous weapon without license. *R. W. Epperson* v. *United States* (1967, 371 F. 2d 956, 125 U.S. App. D.C. 303).

Evidence supported conviction for carrying a deadly weapon. *L. Perry* v. *United States* (D.C. App. 1967, 230 A. 2d 721).

Fingerprint tests, duty to make

There is no requirement that imposes on the Government the affirmative duty to make paraffin or fingerprint tests in regard to pistol involved in prosecution for carrying a pistol without a license, and there was no showing of prejudice from failure to make tests. *M. L. Williams* v. *United States*. (D.C. App. 1968, 237 A. 2d 539).

Guilty plea

The record did not show that the trial judge failed to determine that defendant's plea of guilty to carrying deadly weapon after previous conviction of like offense or of a felony had been made voluntarily, after proper advice, with understanding of nature of charge and consequences. *H. L. Barnett* v. *United States* (1968, 403 F. 2d 918, 131 U.S. App. D.C. 192).

Identification

Question of identification was one of fact for jury in prosecution for assault and for carrying a deadly weapon. *J. J. Durham* v. *United States* (D.C. App. 1968, 237 A. 2d 830).

Impeachment

It is difficult to attach any impeaching quality to evidence which identified and displayed in front of a jury, over objection and against judge's doubts, of three dangerous weapons, which had been taken from defendant's companions when they were arrested but were not charged to possession of defendant, who was indicted for carrying a dangerous weapon without a license in violation of District of Columbia code, and any probative value of the evidence was outweighed by its prejudicial effect. *F. Macklin, Jr.* v. *United States* (1969, 410 F. 2d 1046, 133 U.S. App. D.C. 347).

Indictment

When an indictment carefully traces the language of this section in indicting a defendant for carrying a dangerous weapon without a license, the indictment is valid and it is of no legal significance that the presentment merely states that the defendant was carrying a dangerous weapon, which is not an offense. *United States* v. *W. Bridges* (1970, 432 F. 2d 692, — U.S. App. D.C. —).

Instructions

Since the trial judge's charge contained two erroneous instructions equating intent with malice as essential ingredient of murder and stating that law infers or presumes malice from use of deadly weapon in commission of homicide and both instructions were later reread to jury and jury returned verdict, not of first-degree murder, but of murder in second degree and the jury did not accept whole of government's evidence bearing on degree of defendant's culpability, instructional errors will be noticed by Court of Appeals despite defendant's failure to object at trial and require reversal of conviction of murder in second degree. *United States* v. *A Wharton* (1970, 433 F. 2d 451, — U.S. App. D.C. —).

A charge to the jury outlining the various necessary elements of offense of carrying deadly or dangerous weapon, defining a "deadly or dangerous weapon" and advising that in determining whether the instrument was such a weapon "'you may consider all the circumstances surrounding its possession and use" was adequate. *G. O. Leftwitch* v. *United States* (D.C. App. 1969, 251 A. 2d 646).

In a prosecution for carrying deadly or dangerous weapon, where court's charge on weapon was adequate and there was no cause for confusion in the minds of the jury, it was within the trial court's discretion to give the "Allen" charge reminding jurors that they should give some thought to views of others and should consider their position in light of those views. *Id.*

Defendant may not complain on appeal of deficiencies in instructions given by trial judge in manslaughter prosecution where none of alleged shortcomings were brought to the attention of trial court by appropriate objection or request. *United States* v. *E. Carter* (1969, 420 F. 2d 150, 136 U.S. App. D.C. 308).

Jury question

Evidence showing that police officers saw defendant drop an object later found to be a .22 caliber sawed-off rifle from his automobile posed question for determination by jury as to defendant's guilt or innocence of carrying dangerous weapon. *R. Watson, Jr.* v. *United States* (D.C. App. 1970, 262 A. 2d 121).

It was a jury question whether pistol had been lying on front seat of automobile next to defendant driver within convenient access and reach of defendant so that he might have been found to have had possession under statute, or whether pistol fell out of pocket of passenger and police intervened before defendant could have had access to it, in a prosecution for carrying pistol without a license. *H. E. Waterstaat* v. *United States* (D.C. App. 1969, 252 A. 2d 507).

Lawful arrest

Where police officers noted automobile bearing license tags registered to a different make automobile and requested driver, without making any similar request of passenger, to follow them to precinct house and to go inside, passenger who accompanied the driver and accidentally revealed a loaded revolver in his pocket while inside precinct house had not therefore been under arrest but gave police officer who observed the pistol sufficient grounds for arrest so that the arrest made by that officer was lawful and accompanying search was valid and evidence of pistol was accordingly not subject to suppression in prosecution for carrying a deadly weapon. *J. B. Conyers* v. *United States* (D.C. App. 1968, 237 A. 2d 838).

Moot question

Where a defendant, who was convicted of carrying a dangerous weapon without license in violation of District of Columbia code, had served his sentence, his appeal was not dismissable as moot, since statute under which he was indicted provided for consequence of conviction which did not disappear with expiration of his sentence. *F. Macklin, Jr.* v. *United States* (1969, 410 F. 2d 1046, 133 U.S. App. D.C. 347).

Multiple convictions for the same offense

The fact that the passenger in a vehicle driven by defendant was convicted of carrying pistol without license, following police officer's discovery of pistol lying on seat of vehicle between passenger and driver, did not preclude

conviction of driver for same offense. *H. E. Waterstaat* v. *United States* (D.C. App. 1969, 252 A. 2d 507).

Plain error

In this prosecution for carrying a dangerous weapon, wherein evidence disclosed that the defendant was a part owner and in possession of the apartment building where assault occurred, the prejudice to defendant from counsel's failing to mention the statutory exception, to the prohibition of carrying a weapon if carrying is in a dwelling house or place of business or other land possessed by defendant, required invocation of the "plain error" rule. *A. C. Roumel* v. *United States* (D.C. App. 1970, 261 A. 2d 240).

Under this section prohibiting the carrying of a weapon "except in his dwelling house or place of business or on other land possessed by him", a person need not be a sole rather than part owner of the premises involved. *Id.*

Possession of firearms

Direct personal possession of prohibited weapon is not required for occupant of automobile to be convicted of violation of this section prohibiting carrying pistol without a license. *L. R. Kenhan* v. *United States* (D.C. App. 1970, 263 A. 2d 253).

Probable cause

In this case, since the police officers were investigating reported burglary, and defendants were seen carrying coffee table, and their distinctive clothing matched clothing of men seen in vicinity of burglary, and there was a furtive disposal of instrumentalities of burglary by one defendant, and other defendant attempted to get his gun out of pocket as officers approached, there was probable cause for arrest of defendants and for their search and search of their automobile. *United States* v. *R. Cunningham et ano.* (1970, 424 F. 2d 942, — U.S. App. D.C. —).

Police officer, who as told by taxicab driver who pointed toward three men walking on street that driver had seen person up the street tuck gun under his belt, had probable cause to stop and search the only three men who were present on street even though taxicab driver did not say which of the men he had seen with gun, and gun found on person of defendant in such search was admissible. *H. L. Gaskins* v. *United States* (D.C. App. 1970, 262 A. 2d 810).

Officers' initial observation of defendant's passing what appeared to be a pistol to his companion in the rear seat of an automobile, provided the police officers with probable cause to arrest defendant for possession of a pistol or to search vehicle; it was also lawful for officers to ask the defendant's companion to come out of the vehicle incident to the search, and seizure of the pistol when it fell to floor following companion's move to alight from vehicle was proper. *G. Neal* v. *United States* (D.C. App. 1969, 260 A. 2d 89).

Viewing by officers of the inside of the automobile in which defendant was sitting on parking lot of restaurant at 4:30 A.M. did not constitute a search and was merely a customary check of premises when they saw two other persons lying down in automobile and observed what appeared to be a .38 caliber cartridge on the floor they had probable cause to believe that there was a dangerous weapon in the automobile and were justified in arresting defendant, and revolver which was in plain sight when officers opened door to make arrest was admissible. *J. E. Lucas* v. *United States* (D.C. App. 1969, 256 A. 2d 574).

Probable cause to justify arrest for carrying dangerous weapon does not require exact knowledge of character of the weapon. *J. L. Scott* v. *United States* (D.C. App. 1968, 243 A. 2d 54).

Officer who before beginning conversation with defendant and defendant's companion in lobby of movie theater saw defendant's companion drop knife into cigarette ash container and who saw defendant attempting to slide knife up sleeve of his coat had probable cause for arrest and for subsequent seizure of defendant's knife. *Id.*

Police officers, to whom was communicated through regular channels a report from an unknown eyewitness concerning purported robbery and presence of nearby suspect who was identified in manner which fit defendant's description, had probable cause to arrest without a warrant defendant whom they found near scene of purported robbery, and gun taken in search of defendant's person was admissible in prosecution for carrying the pistol without a license, notwithstanding robbery report was later proved to be false. *C. W. Carter, Jr.* v. *United States* (D.C. App. 1968, 244 A. 2d 483).

Arrest without a warrant for carrying a dangerous or deadly weapon may be made on probable cause. *L. G. Lee* v. *United States* (D.C. App. 1968, 242 A. 2d 212).

Police officer is not privileged to ignore facts which would give him reasonable cause to believe that a person is carrying a dangerous or deadly weapon. *Id.*

Where officer at early hour in morning saw defendant and another man talking to manager of motel and when officer approached they hurriedly moved away from door and officer received inconsistent answers to his inquiries to the men and officer noted that defendant was carrying bag containing large heavy object and when officer asked if there was gun in the bag, defendant started backing off and did not answer, officer had probable cause to arrest defendant for carrying pistol and to seize the gun. *Id.*

Probable cause for arrest

Evidence established that police officers saw gun handle sticking out of defendant's pocket and had probable cause to believe that defendant was carrying dangerous weapon in violation of law. *United States* v. *P. Jenkins, Jr.* (1967, 276 F. Supp. 958).

Proof of intent

Proof of intent is not required to use a knife to menace or inflict bodily harm under statute proscribing carrying a deadly or dangerous weapon. *G. O. Leftwitch* v. *United States* (D.C. App. 1969, 251 A. 2d 646).

Proposed charge encompassing the defense theory that an intent to use knife to menace or inflict bodily harm was a necessary ingredient of offense of carrying deadly or dangerous weapon was incorrect and would have misled jury seriously and was properly refused. *Id.*

Under statute prohibiting carrying of concealed deadly or dangerous weapon, proof of intent to use knife for unlawful purpose is not element of the offense. *J. L. Scott* v. *United States* (D.C. App. 1968, 243 A. 2d 54).

Prosecutor's comments

In a prosecution for carrying a deadly or dangerous weapon, the prosecutor did not comment on defendant's failure to testify and there was no error requiring a reversal where the comment was that defendant "spoke very loud and clear as to this knife. And when was that? That was when he saw the officer. Because, what did he do? He took it from the small of his back and he threw it to the ground, trying to get rid of it". *G. O. Leftwitch* v. *United States* (D.C. App. 1969, 251 A. 2d 646).

Prosecutor's remarks to jury

In a case where jury was apprised of circumstances sufficiently probative to allow them to conclude beyond reasonable doubt that the razor was being carried as a deadly or dangerous weapon, under the circumstances defendant's conviction did not turn in any significant degree on remarks during closing argument by government counsel which attempted to place jury in shoes of victims or likely victims of crime, and in this case no reversal was required. *A. B. Clarke* v. *United States* (D.C. App. 1969, 256 A. 2d 782).

A demonstration of the way a razor might be used as a weapon made by officer during trial was relevant to issue of whether razor was dangerous or deadly weapon, and was not prejudicial to the defendant. *Id.*

Purpose of carrying weapon

In a case where police officer observed defendant walking along a street looking into parked automobiles and trying their door handles, and officer pulled abreast of defendant in patrol automobile, and defendant quickly withdrew behind nearby tree, and officer got out of automobile and approached defendant who reached behind his back and pulled large butcher knife from his belt, in area of small of his back, and threw it to ground in tree box space, test as to whether defendant was carrying deadly or dangerous weapon in violation of statute was whether the purpose of carrying butcher knife was its use as weapon. *G. O. Leftwitch* v. *United States* (D.C. App. 1969, 251 A. 2d 646).

Release pending appeal

Appellant's motion for release on his personal recognizance pending his appeal from a conviction of carrying a dangerous weapon, after conviction of a felony, would be denied where paying deference to the action of District Court, considered with appellant's record, including the conviction and his failure to comply with prior probation and release requirements, the Court of Appeals was of the opinion that no one or more conditions of release would reasonably assure that the appellant would not pose a danger to any other person or to the community if released pending the appeal. *United States* v. *A. Blyther, Jr.* (1969, 407 F. 2d 1279, 132 U.S. App. D.C. 344).

Retrial

Since the issue of whether defendant, who was convicted of carrying a dangerous weapon came within the exception of this section on the ground that he was at least a "possessor" of the apartment building where assault occurred was not fully litigated at trial, government would be given option of a retrial to show if it could, that defendant did not come within the exception. *A. C. Roumel* v. *United States* (D.C. App. 1970, 261 A. 2d 240).

Right to testify

Since the defendant presented six witnesses whose version of the events leading to defendant's arrest for carrying dangerous weapon could not have materially differed from any evidence defendant would have given had he chosen to testify, even if court did rule that government could impeach defendant by use of his prior record, defendant was not precluded from testifying and was not prejudiced in his defense. *R. Watson, Jr.* v. *United States* (D.C. App. 1970, 262 A. 2d 121).

Role of United States Attorney

Delay of almost three months between charging defendant with misdemeanor of carrying deadly weapon and charging him instead with felony of carrying dangerous weapon after having previously been convicted of felony was not objectionable although prosecutor knew the day after arrest that defendant could be held for felony because of previous conviction in District of Columbia of carrying a deadly weapon, in view of time it took to obtain so-called "rap sheet" from F.B.I. showing defendant's felony record outside the District. *R. W. Epperson* v. *United States* (1967, 371 F. 2d 956, 125 U.S. App. D.C. 303).

Ruling of district court as binding on Court of General Sessions

United States district court decision in prosecution for narcotics violation, which suppressed certain evidence as products of illegal search and seizure was not binding on District of Columbia Court of General Sessions, where defendant was charged with possession of prohibited weapon and possession of numbers slips, and which had held previously to United States District Court ruling that certain evidence, which was seized under same circumstances as evidence in federal prosecution, was admissible. *B. R. Burrell* v. *United States* (D.C. App. 1969, 252 A. 2d 897).

Sentences

A sentence of not less than three or more than ten years was not unduly severe after defendant pleaded guilty to carrying deadly weapon after previous conviction of similar offense or of a felony, who had prior convictions of house breaking, grand larceny and receiving stolen property and who had failed to consistently report back to jail in interim between entry of his guilty plea and date of sentencing. *H. L. Barnett* v. *United States* (1968, 403 F. 2d 918, 131 U.S. App. D.C. 192).

Where general sentence imposed following convictions for robbery, assault with a dangerous weapon, and carrying concealed weapon was in excess of statutory maximum for carrying concealed weapon, and convictions for robbery and assault with dangerous weapon were required to be reversed because of absence of indication that defendant made informed decision, after appropriate advice, to proceed with joint counsel, case would be remanded for resentencing on count of carrying concealed weapon. *F. J. Ford* v. *United States of America* (1967, 379 F. 2d 123, 126 U.S. App. D.C. 346).

Waiver of trial by jury

In a prosecution, without jury, where there is a right to trial by jury, did and for the record of what occurred in open court was silent as to waiver of defendant's right to a jury trial, case would be remanded for a determination, after hearing, of whether defendant knowingly and voluntarily waived his right to jury trial in open court and requested a trial by the court, even though informations had been stamped with notation "Jury Trial Demand Withdrawn". *F. H. Jackson* v. *United States* (D.C. App. 1970, 262 A. 2d 106).

The court said that the public interest in obtaining swift and certain justice for those charged with crime, requires that trial court assume responsibility for making certain that record in all criminal trials in which accused has a constitutional right to trial by jury, which are conducted without a jury contains evidence from which it may be found that defendant knowingly and voluntarily waived such right. *Id.*

The court held that in trials commenced after issuance of this opinion, there should be in the record a statement in open court by defendant himself in order to provide a basis for subsequently determining, if necessary, that he knowingly and voluntarily waived his constitutional right to trial by jury. *Id.*

§ 22–3205. Exceptions to section 22–3204.

SECTIONS REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–3203.

NOTES TO DECISIONS

Assistance of counsel

In this case the record did not show that defendant's trial counsel who declined to cross-examine either complainant or arresting officer ineffectively assisted defendant who himself testified and denied assault. *J. J. Scott* v. *United States* (D.C. App. 1969, 259 A. 2d 353).

Burden of proving exception

Defendant had burden of bringing himself within statutory exception to offense charged rather than that of the prosecution to negative it. *M. L. Williams* v. *United States* (D.C. App. 1968, 237 A. 2d 539).

§ 22–3206. Issue of licenses to carry pistol.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–3203.

§§ 22–3207, 22–3208.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 22–3203.

§ 22–3209. Dealers of weapons to be licensed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3203, 22–3210.

§ 22–3210. Licenses of dealers of weapons—Records—By whom granted—Conditions thereof.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3203, 22–3209, 22–3214.

§§ 22–3211, 22–3212.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 22–3203.

§ 22–3213. Exceptions.

Except as provided in section 22–3202 and section 22–3214(b), this chapter shall not apply to toy or

antique pistols unsuitable for use as firearms. (July 8, 1932, 47 Stat. 653, ch. 465, § 13; July 29, 1970, Pub. L. 91–358, § 205(b), title II, 84 Stat. 601.)

AMENDMENT

1970—Section 205(b) of Act July 29, 1970, Public Law 91–358 amended section by striking out "This" and inserting in lieu thereof the following: "Except as provided in section 2 and section 14(b) of this Act [section 22–3202 and section 22–3214(b)], this".

APPLICABILITY OF 1970 AMENDMENT

Section 901(b)(3) of Pub. L. 91–358, provided as follows: (3) The amendments made by sections 201 [sections 22–104 and 22–104a] and 205 [sections 22–3202 and 22–3213] of this Act shall apply with respect to any person who commits an offense after the effective date of this Act. [For effective date see note preceding § 11–101.]

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–3203.

§ 22–3214. Possession of certain dangerous weapons prohibited—Exceptions.

REFERENCE IN TEXT

The "Post Office Department", referred to in subsec. (a), was abolished and all its functions, powers, and duties were transferred to the United States Postal Service by section 4(a) of Act Aug. 12, 1970, Pub. L. 91–375, 84 Stat. 773. Section 6(*c*) of that Act provided that a reference in another law to the Post Office Department shall be considered a reference to the United States Postal Service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9–132, 22–3203, 22–3208, 22–3210.

NOTES TO DECISIONS

Abuse of discretion

The decision of the trial court, rendered after hearing on admissibility, that 1959 conviction of one defendant for housebreaking and larceny and 1962 conviction of another defendant for attempted housebreaking could be brought out on cross-examination in robbery prosecution unless either defendant could satisfy court that since conviction he had led legally blameless life, was not an abuse of discretion. *United States* v. *J. L. Bailey at ano.* (1970, 426 F. 2d 1236, — U.S. App. D.C. —).

Double jeopardy

Where defendant was charged by information with violation of statute which makes it unlawful for one to own or have in his possession a pistol if previously convicted of possession of a prohibited weapon, and before any witness took stand prosecuting attorney announced that Government could not go forward with charge and would nolle prosse it and bring new charge of carrying a pistol without a license, plea of double jeopardy was not a valid plea in new prosecution because the two informations charged separate and distinct offenses. *C. R. Newman* v. *United States* (D.C. App. 1968, 239 A. 2d 152).

Evidence—Sufficiency

Evidence was sufficient to sustain a conviction for assault and possession of dangerous weapon with intent to use the same unlawfully. *C. Willis* v. *United States* (D.C. App. 1969, 250 A. 2d 569).

Evidence was sufficient to sustain a conviction for possession of prohibited weapon. *B. R. Burrell* v. *United States* (D.C. App. 1969, 252 A. 2d 897).

Hearing de novo

It was not erroneous to deny a hearing de novo upon the issue of whether girl in whose apartment defendant, charged with possession of submachine gun, was staying gave her valid consent to search of bed wherein defendant had secreted gun where conflict in testimony between police officers at pretrial hearing on issue was not substantially inconsistent and defendant at no time proffered substance of any new evidence that would be offered by additional officers he had subpoenaed. *R. W. Dupont* v. *United States* (D.C. App. 1969, 259 A. 2d 355).

Inconsistent verdict

In this case, the court held that since there was evidence that defendant not only struck officer with nightstick but also hit him and engaged in general scuffling, finding by jury that defendant was not guilty of charge involving possession of nightstick did not preclude conviction on charge of simple assault *C. T. Matthews* v. *United States* (D.C. App. 1970, 267 A. 2d 826).

Ruling of district court as binding on Court of General Sessions

United States district court decision, in prosecution for narcotics violation, which suppressed certain evidence as products of illegal search and seizure was not binding on District of Columbia Court of General Sessions, where defendant was charged with possession of prohibited weapon and possession of numbers slips, and which had held previously to United States District Court ruling that certain evidence, which was seized under same circumstances as evidence in federal prosecution, was admissible. *B. R. Burrell* v. *United States* (D.C. App. 1969, 252 A. 2d 897).

Search and seizure

A defendant, who was lawfully arrested for operating automobile without a valid permit, was taken to police station in his own automobile, and charged with driving without a valid permit, possession of prohibited weapon and possession of numbers slips, but did not protest or withhold his consent to use by police of his automobile to drive him to police station and was not coerced in any way, there was no seizure of defendant's automobile by police prior to arrival at police station. *B. R. Burrell* v. *United States* (D.C. App. 1969, 252 A. 2d 897).

Waiver of trial by jury

In a prosecution, without jury, where there is a right to trial by jury, and for the record of what occurred in open court was silent as to waiver of defendant's right to a jury trial, case would be remanded for a determination, after hearing, of whether defendant knowingly and voluntarily waived his right to jury trial in open court and requested a trial by the court, even though informations had been stamped with notation "Jury Trial Demand Withdrawn". *F. H. Jackson* v. *United States* (D.C. App. 1970, 262 A. 2d 106).

The court said that the public interest in obtaining swift and certain justice for those charged with crime, requires that trial court assume responsibility for making certain that record in all criminal trials in which accused has a constitutional right to trial by jury which are conducted without a jury, contains evidence from which it may be found that defendant knowingly and voluntarily waived such right. *Id.*

The court held that in trials commenced after issuance of this opinion, there should be in the record a statement in open court by defendant himself in order to provide a basis for subsequently determining, if necessary, that he knowingly and voluntarily waived his constitutional right to trial by jury. *Id.*

§ 22–3215. Penalties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3203, 22–3204, 22–3214.

NOTES TO DECISIONS

Appeal and error

Record in prosecution for carrying a pistol without a license in violation of § 22–3204 supported finding that defendant, to whom Miranda warnings were read by policeman from standard police form and who was given the form to read in police station before being questioned, but who was not asked if he understood contents of form, had been sufficiently informed of his right to remain silent and to counsel. *M. J. Brewster* v. *United States* (D.C. App. 1970, 271 A. 2d 409).

In view of the overwhelming evidence that the particular address claimed by defendant to be his dwelling house was not his dwelling house, any error with respect to whether defendant waived any of his constitutional rights

to remain silent and to counsel before being questioned as to his residence was harmless in prosecution for violation of § 22–3204 prohibiting the carrying of an unlicensed pistol except in one's dwelling house. *Id.*

Sentence

A sentence of not less than three nor more than ten years was not unduly severe after defendant pleaded guilty to carrying deadly weapon after previous conviction of similar offense or of a felony who had prior convictions of house breaking, grand larceny and receiving stolen property and who had failed to consistently report back to jail in interim between entry of his guilty plea and date of sentencing. *H. L. Barnett* v. *United States* (1968, 403 F. 2d 918, 131 U.S. App. D.C. 192).

§ 22–3215a. Manufacture, transfer, use, possession or transportation of molotov cocktails, or other explosives for unlawful purposes, prohibited—Definitions—Penalties.

(a) No person shall within the District of Columbia manufacture, transfer, use, possess, or transport a molotov cocktail. As used in this subsection, the term "molotov cocktail" means (1) a breakable container containing flammable liquid and having a wick or a similar device capable of being ignited, or (2) any other device designed to explode or produce uncontained combustion upon impact; but such term does not include a device lawfully and commercially manufactured primarily for the purpose of illumination, construction work, or other lawful purpose.

(b) No person shall manufacture, transfer, use, possess, or transport any device, instrument, or object designed to explode or produce uncontained combustion, with the intent that the same may be used unlawfully against any person or property.

(c) No person shall, during a state of emergency in the District of Columbia declared by the Commissioner pursuant to law, or during a situation in the District of Columbia concerning which the President has invoked any provision of chapter 15 of title 10, United States Code, manufacture, transfer, use, possess, or transport any device, instrument, or object designed to explode or produce uncontained combustion, except at his resident or place of business.

(d) Whoever violates this section shall (1) for the first offense, be sentenced to a term of imprisonment of not less than one and not more than five years, (2) for the second offense, be sentenced to a term of imprisonment of not less than three and not more than fifteen years, and (3) for the third or subsequent offense, be sentenced to a term of imprisonment of not less than five years and of any term of years up to life imprisonment. In the case of a person convicted of a third or subsequent violation of this section, chapter 402 of title 18, United States Code (Federal Youth Corrections Act) shall not apply. (July 8, 1932, 47 Stat. 654, ch. 465, § 15A; as added July 29, 1970, Pub. L. 91–358, title II, § 209, 84 Stat. 603.)

AMENDMENT

1970—Section 209 of Act July 29, 1970, Public Law 91–358, added this section.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 22–3216. Separability of provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–3203.

§ 22–3217. Dangerous articles—Definition—Taking and destruction—Procedure.

* * * * *

(d) (1) Within thirty days after the date of such surrender, any person may file in the office of the property clerk of the Metropolitan Police Department a written claim for possession of such dangerous article. Upon the expiration of such period, the property clerk shall notify each such claimant, by registered mail addressed to the address shown on the claim, of the time and place of a hearing to determine which claimant, if any, is entitled to possession of such dangerous article. Such hearing shall be held within sixty days after the date of such surrender.

(2) At the hearing the property clerk shall hear and receive evidence with respect to the claims filed under paragraph (1). Thereafter he shall determine which claimant, if any, is entitled to possession of such dangerous article and shall reduce his decision to writing. The property clerk shall send a true copy of such written decision to each claimant by registered mail addressed to the last known address of such claimant.

(3) Any claimant may, within thirty days after the day on which the copy of such decision was mailed to such claimant, file an appeal in the Superior Court of the District of Columbia. If the claimant files an appeal, he shall at the same time give written notice thereof to the property clerk. If the decision of the property clerk is so appealed, the property clerk shall not dispose of the dangerous article while such appeal is pending and, if the final judgment is entered by such court, he shall dispose of such dangerous article in accordance with the judgment of such court. The Superior Court of the District of Columbia is authorized to determine which claimant, if any, is entitled to possession of the dangerous article and to enter a judgment ordering a disposition of such dangerous article consistent with subsection (f).

(4) If there is no such appeal, or if such appeal is dismissed or withdrawn, the property clerk shall dispose of such dangerous article in accordance with subsection (f).

(5) The property clerk shall make no disposition of a dangerous article under this section, whether in accordance with his own decision or in accordance with the judgment of the Superior Court of the District of Columbia, until the United States attorney for the District of Columbia certifies to him that such dangerous article will not be needed as evidence.

* * * * *

(As amended, July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "municipal court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 33.—VAGRANCY

§ 22–3302. "Vagrants" defined.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3203, 22–3303 to 22–3306, 33–416a.

NOTES TO DECISIONS

Constitutionality

Since the term loitering as used in this section failed to supply the necessary statutory criteria by which one could objectively distinguish lawful from unlawful conduct the statute was unconstitutional. *H. M. Ricks* v. *District of Columbia* (1968, 414 F. 2d 1097, 134 U.S. App. D.C. 201).

Since under the Narcotics Vagrancy and General Vagrancy Statutes anyone using street for a lawful business in a lawful manner may do so without restriction, statutes are not an unreasonable restriction on freedom of movement in violation of due process clause of Fifth Amendment. *H. M. Ricks and J. N. Williams* v. *United States; H. M. Ricks* v. *District of Columbia* (D.C. App. 1967, 228 A. 2d 316; rev'd 414 F. 2d 1097, 134 U.S. App. D.C. D.C. 201).

Convictions for violation of Narcotics Vagrancy and General Vagrancy Statutes were not invalid on ground that defendants were being punished solely for their status as vagrants. *Id.*

Convictions of defendants for violation of Narcotics Vagrancy and General Vagrancy Statutes on proof showing defendants' associations with known narcotics users and prostitutes did not violate Eighth Amendment's prohibition against cruel and unusual punishment despite claim that there was an absence of any overt criminal act. *Id.*

Construction

Vagrancy statute, because it defines a crime, must be construed narrowly in favor of defendant. *J. Johnson* v. *District of Columbia* (D.C. App. 1967, 230 A. 2d 483).

When an individual is unable to give a good account to police when wandering at late and unusual hours and is associated with criminals or narcotics addicts and is not lawfully employed, these factors, together with others enumerated in statutes, constitute probable cause for arrest for vagrancy. *H. M. Ricks and J. N. Williams* v. *United States; H. M. Ricks* v. *District of Columbia* (D.C. App. 1967, 228 A. 2d 316; rev'd 414 F. 2d 1097, 134 U.S. App. D.C. 201).

Vagrancy statutes were not invalid on ground that they were "catch-alls" used when other crimes could not be proven or that they allegedly required a lesser quantum of proof to convict. *Id.*

Word "loitering" as used in Narcotics Vagrancy and General Vagrancy Statutes was not unconstitutionally vague, particularly where additional conditions were necessary to constitute offense. *Id.*

Reference to "failure to give a good account" as used in Narcotics Vagrancy and General Vagrancy Statutes restricts rather than enlarges application of statutes and allows suspected vagrant to dissipate probable cause by satisfactorily explaining his conduct, and the arresting officer is not the only one who must evaluate account given by person questioned. *Id.*

Narcotics Vagrancy and General Vagrancy Statutes delineate with specificity what vagrancy is, and the definitions are neither numerous nor susceptible to widely divergent interpretations. *Id.*

Evidence—Circumstantial

Circumstantial evidence may sustain vagrancy conviction, but inferential proof of ultimate fact may not be based upon mere possibility, speculation or conjecture. *J. Johnson* v. *District of Columbia* (D.C. App. 1967, 230 A. 2d 483).

——Sufficiency

Evidence, including evidence that female defendant, while sober, well-behaved, and decently attired, was seen flagging down automobiles in early morning hours, was insufficient to sustain conviction for vagrancy. *J. Johnson* v. *District of Columbia* (D.C. App. 1967, 230 A. 2d 483).

Immorality and profligate

The phrase "leading an immoral and profligate life" as used in this section necessitated so much guesswork as to its coverage as to render statute invalid *H. M. Ricks* v. *District of Columbia* (1968, 414 F. 2d 1097, 134 U.S. App. D.C. 201).

The terms "immorality" and "profligateness" are not terms of art. *Id.*

Not giving a good account of himself

The phrase "not giving a good account of himself" as used in this section was much too loose to satisfy constitutional requirements. *H. M. Ricks* v. *District of Columbia* (1968, 414 F. 2d 1097, 134 U.S. App. D.C. 201).

The phrase "a good account" as used in this section was so indefinite as to render statute unconstitutional. *Id.*

Proscription contained in this section against wandering without any visible or lawful business coupled with requirements that wanderer give "a good account" of himself granted unfettered discretion to administrative and judicial authorities and rendered statute invalid. *Id.*

Police vagrancy observation practices

Although three subsections of this section have been declared unconstitutional, since plaintiff's complaint for injunctive and declaratory relief from police vagrancy observation practices sought to have the whole statute declared unconstitutional and since there was no showing that vagrancy reports on plaintiff had been made pursuant to one of subsections declared unconstitutional, case should not have been dismissed by the District Court and full evidentiary hearing must be held. *M. J. Gomez* v. *J. Wilson, Chief of Police, et al.* (1970, 430 F. 2d 495, — U.S. App. D.C. —).

Prior convictions

One can be found guilty of violating either Narcotics Vagrancy Statute or the General Vagrancy Statute without having been previously convicted. *H. M. Ricks and J. N. Williams* v. *United States; H. M. Ricks* v. *District of Columbia* (D.C. App. 1967, 228 A. 2d 316; rev'd 414 F. 2d 1097, 134 U.S. App. D.C. 201).

Both the Narcotics Vagrancy Statute and General Vagrancy Statute employ separate paragraphs which disjunctively set up criteria amounting to vagrancy and both require factors, other than prior convictions, which conjunctively amount to violation, so that prior convictions are not essential to all subsections of the statutes. *Id.*

Prior convictions of accused are admissible in prosecution for violation of vagrancy statutes. *Id.*

Narcotics Vagrancy and General Vagrancy Statutes do not improperly require presentation and proof of prior convictions, and do not deny due process and fair trial. *Id.*

Probable cause for arrest

Arrest for vagrancy without warrant was justified under evidence, including testimony of experienced police officers that they had observed defendant in company of known prostitutes and narcotics violators on four occasions during two nights. *J. L. Worthy* v. *United States* (1968, 409 F. 2d 1105, 133 U.S. App. D.C. 188).

Purpose of statute

A course of conduct rather than an overt act is prohibited by the Narcotics Vagrancy and General Vagrancy Statutes. *H. M. Ricks and J. N. Williams* v. *United States; H. M. Ricks* v. *District of Columbia* (D.C. App. 1967, 228 A. 2d 316; rev'd 414 F. 2d 1097, 134 U.S. App. D.C. 201).

Purpose of Narcotics Vagrancy and General Vagrancy Statutes is to prevent crimes which may likely flow from the vagrant's mode of life. *Id.*

Search

Although it is incident to an arrest for vagrancy the search was not for that reason required to be limited to a frisk. *J. L. Worthy* v. *United States* (1968, 409 F. 2d 1105, 133 U.S. App. D.C. 188).

Statistics as evidence

Statistical likelihood that a particular societal segment will engage in criminality is not permissible as an all-out substitute for proof of individual guilt. And not even past violation of the criminal law authorizes one's subjection to innately vague statutory specifications of crime *H. M. Ricks* v. *District of Columbia* (1968, 414 F. 2d 1097, 134 U.S. App. D.C. 201).

§ 22–3303. Prosecutions—Burden of proof to show lawful employment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3203, 22–3304 to 22–3306.

§ 22–3304. Penalty—Conditions imposed by court.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3203, 22–3305, 22–3306.

§ 22–3305. Prosecutions.

All prosecutions under sections 22–3302 to 22–3306 shall be in the Superior Court of the District of Columbia in the name of the District of Columbia, by the corporation counsel or any of his assistants. (Dec. 17, 1941, 55 Stat. 810, ch. 589, § 4; Apr. 1, 1942. 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3203, 22–3304, 22–3306.

§ 22–3306. Right to strike or picket not abrogated.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3203, 22–3304, 22–3305.

Chapter 34.—MISCELLANEOUS

Sec.

22–3426. Debt adjusting — Prohibitions — Exceptions — Penalties—Prosecutions for violations.
22–3427. Breaking and entering vending machines and similar devices—Penalties.

§ 22–3404. Kosher meat—Sale—Labeling—Signs displayed where kosher and nonkosher meats are sold.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3405, 22–3406.

§ 22–3405. Kosher meat—"Meat"—"Person"—Definition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–3406.

§ 22–3406. Kosher meat—Penalties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–3405.

§ 22–3409. Mislabelling potatoes.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3410 to 22–3412.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(207) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to establishing rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 22–3410. Mislabelling potatoes—Sign to show grade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3409, 22–3411, 22–3412.

§ 22–3411. Mislabelling potatoes—Law not applicable to seed potatoes.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3409, 22–3412.

§ 22–3412. Mislabelling potatoes—Penalties.

SECTION REFERLED TO IN OTHER SECTIONS

This section is referred to in section 22–3409, 22–3411.

§ 22–3414. Use of flag for advertising purposes—Mutilation of flag.

Any person who, within the District of Columbia, in any manner, for exhibition or display, shall place or cause to be placed any word, figure, mark, picture, design, drawing or any advertisement of any nature upon any flag, standard, colors or ensign of the United States of America; or shall expose or cause to be exposed to public view any such flag, standard, colors or ensign upon which shall have been printed, painted or otherwise placed, or to which shall be attached, appended, affixed or annexed any word, figure, mark, picture, design or drawing, or any advertisement of any nature; or who, within the District of Columbia, shall manufacture, sell, expose for sale or to public view or give away or have in possession for sale or to be given away or for use for any purpose, any article or substance being an article of merchandise, or a receptacle for merchandise or article or thing for carrying or transporting merchandise, upon which shall have been printed, painted, attached or otherwise placed a representation of any such flag, standard, colors or ensign, to advertise, call attention to, decorate, mark or distinguish the article or substance on which so placed shall be deemed guilty of a misdemeanor and shall be punished by a fine not exceeding $100 or by imprisonment for not more than thirty days, or both, in the discretion of the court. The words "flag, standard, colors, or ensign," as used herein, shall include any flag, standard, colors, ensign or any picture or representation of either, or of any part or parts of either, made of any substance or represented on any substance, of any size evidently purporting to be either of said flag, standard, colors or ensign of the United States of America or a picture or a representation of either, upon which shall be shown the colors, the stars and the stripes, in any number of either thereof, or of any part or parts of either, by which the average person seeing the same without deliberation may believe the same to represent the flag, colors, standard or ensign of the United States of America. (July 30, 1947, ch. 389, 61 Stat. 642; July 5, 1968, Pub. L 90–381, § 3, 82 Stat. 291.)

CODIFICATION

This section is taken from section 3 of title 4 of the U.S. Code. Title 4 of the U S. Code was enacted into law by section 1 of the Act of July 30, 1947, ch. 389, 61 Stat. 641, and section 3 thereof was amended by Pub. L. 90–381 in the respect described in the amendment note.

AMENDMENT

1968—Section 3, act July 5, 1968, Pub. L. 90–381 amended section by striking from the first sentence thereof the following: "; or who, within the District of Columbia, shall publicly mutilate, deface, defile or defy, trample upon, or cast contempt, either by word or act, upon any such flag, standard, colors, or ensign,".

CROSS REFERENCE

Desecration of the flag of the United States, penalties, see 18 U.S.C. § 700.

§ 22–3416. Sale of unwholesome food prohibited.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3417, 22–3419 to 22–3422.

§ 22–3417. "Food" defined.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3419 to 22–3422.

§ 22–3418. Duty of director of public health.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3417, 22–3419 to 22–3422.

§ 22–3419. Commissioners to make rules and regulations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3417, 22–3420 to 22–3422.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(208) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 22–3420. Prosecutions for violations.

Prosecutions for violations of any of the provisions of sections 22–3416 to 22–3422 or of any regulations promulgated thereunder shall be on information in the Superior Court of the District of Columbia by the corporation counsel of the District of Columbia or any of his assistants. (Dec. 16, 1941, 55 Stat. 808, ch. 587, § 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3417, 22–3419, 22–3421, 22–3422.

§ 22–3421. Penalty for violation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3417, 22–3419, 22–3420, 22–3422.

§ 22–3422. Sections 22–3416 to 22–3422 supplemental to Federal Food, Drug, and Cosmetic Act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3417, 22–3419 to 22–3421.

§ 22–3423. Use, by private detective or collection agencies, of the words "District of Columbia", "District," the initials "D.C." to create impression that agency represents the District, is prohibited.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3424, 22–3425.

§ 22–3424. Penalty for violation of section 22–3423.

Any person who violates section 22–3423 shall be punished by a fine of not more than $300 or by imprisonment for not more than ninety days, or by both such fine and imprisonment. (Oct. 16, 1962, 76 Stat. 1071, Pub. L. 87–837, § 2.)

CODIFICATION

This section is set out in this supplement to correct a typographical error in the section as it appears in the 1967 edition of the code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 22–3423.

§ 22–3426. Debt adjusting—Prohibitions—Exceptions—Penalties—Prosecutions for violations.

(a) As used in this section—

(1) "Debt adjusting" means an activity, whether referred to by the term "budget counseling", "budget planning", "budget service", "credit advising", "debt adjusting", "debt counseling", "debt help", "financial adjusting", "financial arranging", "prorating", or some other term of like import, which involves a particular debtor's entering into an express or implied contract whereby the debtor agrees to pay an amount or amounts of money periodically or otherwise to a person who agrees, for a consideration, to distribute such money among specified creditors in accordance with a plan agreed upon between the debtor and the person to whom the debtor makes or agrees to make such payments.

(2) "Person" does not include an individual admitted to the bar of the United States District Court for the District of Columbia.

(3) "Partnership" does not include a partnership all the members of which are admitted to the bar of the United States District Court for the District of Columbia.

(b) Except as provided in subsection (c), no person, partnership, association, or corporation shall engage in the business of debt adjusting in the District of Columbia.

(c) The provisions of this section shall not apply to those situations involving debt adjusting incurred incidentally in the lawful practice of law in the District of Columbia nor shall anything in this section be construed to apply to any nonprofit or charitable corporation or association which engages in debt adjusting even though the nonprofit corporation or association may charge and collect nominal sums as reimbursement for expenses in connection with such services.

(d)(1) Whoever violates subsection (b) shall be subject to a fine of not more than $1,000 and to imprisonment for not more than six months, or to both.

(2) Prosecutions for violations of this section shall be conducted in the name of the District of Columbia by the Corporation Counsel or any of his assistants. (May 22, 1970, Pub. L. 91–266, 84 Stat. 264.)

§ 22–3427. Breaking and entering vending machines and similar devices—Penalties.

Whoever in the District of Columbia breaks open, opens, or enters, without right, any parking meter, coin telephone, vending machine dispensing goods or services, money changer, or any other device designed to receive currency, with intent to carry away any part of such device or anything contained therein, shall be sentenced to a term of imprisonment of not more than three years, or to a fine of not more than $3,000, or both. (July 29, 1970, Pub. L. 91–358, § 203, title II, 84 Stat. 600.).

EFFECTIVE DATE

See note preceding section 11–101.

Chapter 35.—SEXUAL PSYCHOPATHS

§ 22–3501. Indecent acts—Children.

NOTES TO DECISIONS

Burden of proof

The evidence adduced at habeas corpus proceeding did not support the trial court's finding that petitioner, who had originally been committed under the District of Columbia Sexual Psychopath Act, was likely to inflict injury, loss, pain or other evil on others by his sexual misconduct if he were released. *M. I. Millard* v. *D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

Habeas corpus petitioner who had been committed under the District of Columbia Sexual Psychopath Act had the burden to show that his past behavior, examined under the illumination provided by psychiatric evaluation of those actions, did not justify conclusion that he fell within statutory definition of one who was likely to inflict injury on others. *Id.*

Whether habeas corpus petitioner who was committed under the District of Columbia Sexual Psychopath Act should be released on habeas corpus would be determined on likelihood that he would, if released, be dangerous to others because of sexual misconduct. *Id.*

Petitioner who was confined in hospital pursuant to proceeding under District of Columbia Sexual Psychopath Act had the burden to show by a preponderance of the evidence that his continued confinement as sexual psychopath was not justified. *Id.*

Conditions justifying commitment

Predictions of dangerousness which would justify commitment under the District of Columbia Sexual Psychopath Act requires determination of type of conduct of which individual may engage; likelihood or probability that he will indulge in that conduct; and effect that such conduct if engaged in will have on others. *M. I. Millard* v. *D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

In determining what acts may be considered in applying District of Columbia Sexual Psychopath Act, court must read "sexual" in common meaning of that term. *Id.*

Construction with other laws

The District of Columbia Sexual Psychopath Act was not repealed by the 1964 Hospitalization of Mentally Ill Act. *M. I. Millard* v. *D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

Court of Appeals would not read into the District of Columbia Sexual Psychopath Act the procedural protections of the Hospitalization of the Mentally Ill Act. *Id.*

Conviction for carnal knowledge and taking indecent liberties

A defendant may not properly be convicted of both carnal knowledge and taking indecent liberties with minor child as result of one incident. *United States* v. *W. D. Heard* (1969, 420 F. 2d 628, 137 U.S. App. D.C. 60).

Since the defendant was charged with both carnal knowledge and taking indecent liberties with minor child, jury should have been instructed to first consider carnal knowledge offense and, if they found defendant guilty beyond a reasonable doubt, sole verdict should have been guilty of that offense, but if they acquitted defendant of carnal knowledge they should have proceeded to consider whether defendant was guilty or not guilty of the crime of indecent liberties. *Id.*

Criminal sentencing

Where Chief of Legal Psychiatric Division expressed opinion raising doubt of competency for criminal sentencing for allegedly sexually violating the person of a child five years of age, so as to call for a hearing under the Sexual Psychopath Act, trial judge erred in proceeding to sentence for criminal offense, and Court of Appeals would remand for competency hearing. *G. Fuller* v. *United States* (1967, 390 F. 2d 468, 129 U.S. App. D.C. 53).

Disclosure of prior record

Where evidence of identification of defendant as perpetrator of offense involving sexual abuse of a little girl was inconclusive, and trial court had denied defendant's motion to permit defendant to testify without having his prior record exposed, and once defendant's prior record was disclosed to jury it was impossible, on facts of case, to say with assurance that jury would have found defendant guilty beyond reasonable doubt of crime for which he was on trial, new trial was required. *R. A. Barber* v. *United States* (1968, 392 F. 2d 517, 129 U.S. App. D.C. 193).

Due Process

Since a proceeding under District of Columbia Sexual Psychopath Act is closely related to behavior of person rather than to his mental condition considered apart from his behavior, constitutional guaranties implicit in due process of law must come into play. *M. I. Millard* v. *D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

Elements of offense

The elements of the offense of taking indecent liberties with a minor child are taking immoral, improper, or indecent liberties with a child under the age of 16 with the intent of arousing, appealing to, or gratifying the lust, passions, or sexual desires of the child or of the accused. *A. Allison* v. *United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

Evidence was sufficient to establish all elements of the offense of taking indecent liberties with a minor child. *Id.*

Evidence

Failure of the trial court in habeas corpus proceeding to distinguish between petitioner's sexual and nonsexual misconduct as a reason for his commitment under District of Columbia Sexual Psychopath Act and trial court's failure to evaluate the likelihood, as opposed to mere possibility, that petitioner would engage in sexual misconduct if released constituted reversible error. *M. I. Millard* v. *D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

Evidence in habeas corpus proceeding established that if released, the petitioner, who had been committed under District of Columbia Sexual Psychopath Act, would be unlikely to engage in sexual misconduct other than exhibitionism. *Id.*

Evidence at habeas corpus proceeding established that likelihood of serious injury to a child who might see the petitioner expose himself in public was too remote to justify commitment under District of Columbia Sexual Psychopath Act. *Id.*

Evidence at habeas corpus proceeding established that future sexual misconduct of petitioner, if any, was not sufficiently likely to cause kind of harm required by District of Columbia Sexual Psychopath Act to justify further commitment. *Id.*

—— Sufficiency

In this case wherein defendant was charged with four counts of taking indecent liberties with a child, and three counts of sodomy, the evidence was insufficient to sustain conviction except with respect to one indecent liberties count. *P. Coltrane* v. *United States* (1969, 418 F. 2d 1131, 135 U.S. App. D.C. 295).

Former jeopardy protection

A jury which was specifically prohibited from considering a charge of taking indecent liberties with minor child if defendant were to be found guilty of assault with intent to commit carnal knowledge, and defendant was found guilty of the latter charge, its verdict of not guilty of the former charge was a nullity and did not clothe defendant with former jeopardy protection or preclude reviewing court from directing entry of judgment of guilty on indecent liberties charge upon finding that evidence was insufficient to sustain conviction for assault with intent to commit carnal knowledge. *A. Allison* v. *United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

Instructions

The court's instruction that the jury could find defendant guilty of both carnal knowledge and taking indecent liberties with minor child as result of same incident was error. *United States* v. *W. D. Heard* (1969, 420 F. 2d 628, 137 U.S. App. D.C. 60).

Defendant was convicted of an assault on a female under age of 16 with intent to commit carnal knowledge and with taking immoral, improper and indecent liberties with a female under age of 16, in violation of Miller Act, and the court should have given requested instruction that jury should consider count based on Miller Act only if they acquitted on the other count and, although failure to so instruct did not impair verdict under Miller Act, conviction for other offense must be set aside. *H. C. Dozier* v. *United States* (1967, 382 F. 2d 482, 127 U.S. App. D.C. 206).

Failure of court to instruct on simple assault as less offense under count charging taking immoral, improper, and indecent liberties with female under age of 16 furnished no basis for reversal, as jury was instructed on simple assault as less offense under count charging assault on female under age of 16 with intent to commit carnal knowledge. *Id.*

Lesser included offense

The crime of taking indecent liberties is a lesser included offense of assault with intent to commit carnal knowledge. *A. Allison* v. *United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

Limitation of applicability of chapter

The protection of the District of Columbia Hospitalization of the Mentally Ill Act is limited to those who are declared insane or of unsound mind pursuant to a court order and does not include any person previously committed under the Sexual Psychopathy Act. *M. I. Millard* v. *D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

Matters to be considered on remand

Where Court of Appeals remanded case for competency hearing under Sexual Psychopath Act because of psychiatric opinion, district court would be authorized to receive, or to direct prosecutor to file, statement looking toward application of Sexual Psychopath Act, and hearing on remand should also embrace issue of possibility of lack of competency at trial. *G. Fuller* v. *United States* (1967, 390 F. 2d 468, 129 U.S. App. D.C. 53).

Where Court of Appeals remanded to District Court case for competency hearing under Sexual Psychopath Act because of psychiatric opinion raising doubt of competency of defendant, inquiry at hearing on remand should embrace mental condition of defendant at time of alleged offense, what kind of judgment or sentence was appropriate, and what kind of disposition should be made of defendant, including a possible civil commitment under the Hospitalization of the Mentally Ill Act. (25–501 et seq.) *Id.*

"Not insane" construed

The words "not insane" as used in District of Columbia Sexual Psychopath Act means "not mentally ill". *M. I. Millard* v. *D. W. Harris, Acting Sup't, etc.* (1968, 406 F. 2d 964, 132 U.S. App. D.C. 146; rev'g 373 F. 2d 468).

When words "not insane" in District of Columbia Sexual Psychopath law is read to mean "not mentally ill" the sole justification for commitment under the act is the patient's dangerousness. *Id.*

Prosecutor's statement

Statement of the prosecutor, in his closing argument, that defendant's testimony was a recent fabrication designed to lure jury and hoodwink them, although not a permissible statement, did not warrant reversal of conviction for taking indecent liberties with eleven-year-old boy in view of eminently fair charge in which the district judge sought to compensate indirectly for such an impermissible comment. *C. W. Gibson* v. *United States* (1968, 403 F. 2d 569, 131 U.S. App. D.C. 163).

Remedy on appeal

Although defendant who was charged with both carnal knowledge and with taking indecent liberties with minor child did not request that the jury consider indecent liberties charge only after an acquittal of carnal knowledge and jury convicted defendant on both charges after being erroneously instructed that conviction on one charge should not influence verdict on other charge, the proper remedy was to remand case with instruction to vacate judgment of conviction of taking indecent liberties with minor child. *United States* v. *W. D. Heard* (1969, 420 F. 2d 628, 137 U.S. App. D.C. 60).

Reviewing court's authority

Where evidence does not sustain conviction of assault with intent to commit carnal knowledge but was sufficient to establish all elements of taking indecent liberties with minor child, reviewing court in remanding with directions to enter judgment of guilty of taking indecent liberties would accord permission to trial judge to grant new trial if he should deem it to be in the best interest of justice. *A. Allison* v. *United States* (1969, 409 F. 2d 445, 133 U.S. App. D.C. 159).

§ 22–3502. Sodomy.

NOTES TO DECISIONS

Evidence—Sufficiency

In this case wherein defendant was charged with four counts of taking indecent liberties with a child, and three counts of sodomy, the evidence was insufficient to sustain conviction except with respect to one indecent liberties count. *P. Coltrane* v. *United States* (1969, 418 F. 2d 1131, 135 U.S. App. D.C. 295).

§ 22–3503. Definitions.

For the purposes of sections 22–3503 to 22–3511—

(1) The term "sexual psychopath" means a person, not insane, who by a course of repeated misconduct in sexual matters has evidenced such lack of power to control his sexual impulses as to be dangerous to other persons because he is likely to attack or otherwise inflict injury, loss, pain, or other evil on the objects of his desire.

(2) The term "court" means a court in the District of Columbia having jurisdiction of criminal offenses or delinquent acts.

(3) The term "patient" means a person with respect to whom there has been filed with the clerk of any court a statement in writing setting forth facts tending to show that such person is a sexual psychopath.

(4) The term "criminal proceeding" means a proceeding in any court against a person for a criminal offense, and includes all stages of such a proceeding from (A) the time the person is indicted, charged by an information, or charged with a delinquent act, to (B) the entry of judgment, or, if the person is granted probation, the completion of the period of probation.

(June 9, 1948, 62 Stat. 347, ch. 428, title II, § 201; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, § 157(c)(1)(A)(B), title I, 84 Stat. 574.)

AMENDMENT

1970—Section 157(c)(1)(A)(B) of Act July 29, 1970, Public Law 91–358 amended section, (A) by amending paragraph (2) to read as follows:

"(2) The term 'court' means a court in the District of Columbia having jurisdiction of criminal offenses or delinquent acts.", and

(B) by striking out "an offense in the juvenile court of the District of Columbia" in paragraph (4) and inserting in lieu thereof "a delinquent act".

EFFECTIVE DATE OF AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3505 to 22–3507, 22–3509 to 22–3511.

NOTES TO DECISIONS

Construction

Under sections 22–3501 to 22–3511, term "not insane" must be read to mean "not 'mentally ill'" within meaning of sections 21–501 to 21–591 and sections 22–3501 to 22–3511 apply only to those who are not mentally ill while compulsory treatment of those who are mentally ill is governed by sections 21–501 to 21–591. *T. B. Cross* v. *D. W. Harris* (1969, 418 F. 2d 1095, 135 U.S. App. D.C. 259).

Dangerous conduct

Statute defining sexual psychopath as a person who by repeated sexual misconduct evinces inability to control sexual impulses so as to be likely to be dangerous to others requires that the dangerous conduct be not merely repulsive or repugnant but must have serious effect on the viewer. *M. I. Millard* v. *D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383; rev'd and remanded 406 F. 2d 964).

Grounds for commitment

Commitment under sections 22–3501 to 22–3511 cannot be based simply on determination that a person is likely to engage in particular acts and court must also determine harm, if any, that is likely to flow from these acts; since mere possibility of injury is insufficient, harm must be likely. *T. B. Cross* v. *D. W. Harris* (1969, 418 F. 2d 1095, 135 U.S. App. D.C. 259).

In enacting sections 22–3501 to 22–3511 Congress did not intend to authorize indefinite preventive detention for those who have propensity to behave in way that is merely offensive or obnoxious to others; and threatened harm must be substantial so that before a commitment is required a person must be found likely to engage in sexual misconduct in circumstances where that misconduct will inflict substantial injury upon others *Id.*

In determining question of likelihood of harm to ascertain whether a person should be committed under sections 22–3501 to 22–3511 particularly relevant considerations are: seriousness of expected harm; availability of in-patient and out-patient treatment for individual concerned; and expected length of confinement required for in-patient treatment. *Id.*

Habeas corpus

A habeas corpus petitioner, who was under hospital commitment as a sexual psychopath, was not entitled to be released on the ground that he was not mentally ill, as psychiatric testimony established that the petitioner was still a sexual psychopath who was likely to be of danger to others if permitted to return to society. *In re J. E. Clatterbuck* v. *D. W. Harris, Superintendent, etc.* (1968, 295 F. Supp. 84).

Release of sexual psychopath

Continued detention in mental institution of a mentally ill person, who was committed under the Sexual Psychopath Act, is unwarranted since, by statutory definition, a mentally ill person cannot be a sex psychopath. *E. Norwood* v. *L. Jacobs* (1970, 430 F. 2d 903, — U.S. App. D.C. —).

Although an indefinite commitment pursuant to the Sexual Psychopath Law is justifiable only upon a theory of therapeutic treatment, and although the evidence in instant case clearly disclosed that petitioner was not being given therapeutic treatment adequate for his condition, petitioner was not to be released from his confinement as a sexual psychopath, in view of the fact that, while treatment was not being given, the fault lay entirely with petitioner who steadfastly refused appropriate and available treatment, namely, psychotherapy. *In re J. E. Clatterbuck* v. *D. W. Harris, Superintendent, etc.* (1968, 295 F. Supp. 84).

Sufficiency of record

Since examining doctors concluded that person committed under sections 22–3501 to 22–3511 was not insane but they had no occasion to consider whether he was nonetheless mentally ill, there was no record on the question and habeas corpus petition must be remanded for hearing and findings of fact necessary to determine whether statute was properly applied to petitioner. *T. B. Cross* v. *D. W. Harris* (1969, 418 F. 2d 1095, 135 U.S. App. D.C. 259).

§ 22–3504. Filing of statement.

(a) Whenever it shall appear to the United States attorney for the District of Columbia that any person within the District of Columbia, other than a defendant in a criminal proceeding, is a sexual psychopath, such attorney may file with the clerk of the Superior Court of the District of Columbia a statement in writing setting forth the facts tending to show that such a person is a sexual psychopath.

* * * * *

(As amended, July 29, 1970, Pub. L. 91–358, title I, § 157(c)(2), 84 Stat. 574.)

AMENDMENT

1970—Section 157(c)(2) of Act July 29, 1970, Public Law 91–358, amended subsec. (a) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3503, 22–3505 to 22–3507, 22–3509 to 22–3511.

NOTES TO DECISIONS

Criminal sentencing

Where Chief of Legal Psychiatric Division expressed opinion raising doubt of competency for criminal sentencing for allegedly sexually violating the person of a child five years of age, so as to call for a hearing under the Sexual Psychopath Act, trial judge erred in proceeding to sentence for criminal offense, and Court of Appeals would remand for competency hearing. *G. Fuller* v. *United States* (1967, 390 F. 2d 468, 129 U.S. App. D.C. 53).

Legislative authority

While Congress has the authority to prohibit acts of exhibition even if the acts are unlikely to do serious harm and may punish willful violations of laws forbidding indecent behavior, the test of what anticipated conduct may justify preventive dention is simply whether legislature has power to prohibit such conduct or to attack evil it portends. *T. B. Cross* v. *D. W. Harris* (1969, 418 F. 2d 1095, 135 U.S. App. D.C. 259).

Matters to be considered on remand

Where Court of Appeals remanded case for competency hearing under Sexual Psychopath Act because of psychiatric opinion, district court would be authorized to receive, or to direct prosecutor to file, statement looking toward application of Sexual Psychopath Act, and hearing on remand should also embrace issue of possibility of lack of competency at trial. *G. Fuller* v. *United States* (1967, 390 F. 2d 468, 129 U.S. App. D.C. 53).

Where Court of Appeals remanded to District Court case for competency hearing under Sexual Psychopath Act because of psychiatric opinion raising doubt of competency of defendant, inquiry at hearing on remand

should embrace mental condition of defendant at time of alleged offense, what kind of judgment or sentence was appropriate, and what kind of disposition should be made of defendant, including a possible civil commitment under the Hospitalization of the Mentally Ill Act. (21–501 et seq.) *Id.*

§ 22–3505. Right to counsel.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3503, 22–3506, 22–3507, 22–3509 to 22–3511.

§ 22–3506. Examination by psychiatrists.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3503, 22–3505, 22–3507 to 22–3511.

NOTES TO DECISIONS

Expert testimony

The likelihood of a recurrence of sexual misconduct, likely frequency of such behavior, and magnitude of harm to other persons that is likely to result are three questions of fact on which expert testimony would be relevant in proceeding to commit person under section 22–3501 to 22–3511. *T. B. Cross* v. *D. W. Harris* (1969, 418 F. 2d 1095, 135 U.S. App. D.C. 259).

Hearing

Though sexual psychopath statute requires psychiatric report to include a legal conclusion, it also requires a hearing in which psychiatrist can be examined and cross examined. *M. I. Millard* v. *D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383; rev'd and remanded 406 F. 2d 964).

Justification for lack of treatment

One involuntarily committed to public hospital as sexual psychopath is entitled to relief upon showing that he was not receiving reasonably suitable and adequate treatment, and lack of such treatment cannot be justified by lack of staff or facilities. *M. I. Millard* v. *D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383; rev'd and remanded 406 F. 2d 964).

Psychiatrists report as basis for commitment

Conclusory statement in psychiatrists' report was insufficient for commitment as sexual psychopath, in absence of full hearing, and court's statement that it acted upon "the testimony and evidence adduced" did not provide adequate assurance that statute had been complied with and that an informed judgment had been made. *M. I. Millard* v. *D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383; rev'd and remanded 406 F. 2d 964).

§ 22–3507. When hearing is required.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3503, 22–3505, 22–3506, 22–3509 to 22–3511.

§ 22–3508. Hearing—Commitment to Saint Elizabeths Hospital.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3503, 22–3505 to 22–3507, 22–3509 to 22–3511.

NOTES TO DECISIONS

Basis for indefinite commitment

Indefinite commitment under sexual psychopath law is justifiable only upon a theory of therapeutic treatment. *M. I. Millard* v. *D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383; rev'd and remanded 406 F. 2d 964).

Hearing

Though sexual psychopath statute requires psychiatric report to include a legal conclusion, it also requires a hearing in which psychiatrist can be examined and cross examined. *M. I. Millard* v. *D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383; rev'd and remanded 406 F. 2d 964).

Psychiatrists report as basis for commitment

Conclusory statement in psychiatrists' report was insufficient for commitment as sexual psychopath, in absence of full hearing, and court's statement that it acted upon "the testimony and evidence adduced" did not provide adequate assurance that statute had been complied with and that an informed judgment had been made. *M. I. Millard* v. *D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383; rev'd and remanded 406 F. 2d 964).

Release of sexual psychopath

Although an indefinite commitment pursuant to the Sexual Psychopath Law is justifiable only upon a theory of therapeutic treatment, and although the evidence in instant case clearly disclosed that petitioner was not being given therapeutic treatment adequate for his condition, petitioner was not to be released from his confinement as a sexual psychopath, in view of the fact that, while treatment was not being given, the fault lay entirely with petitioner who steadfastly refused appropriate and available treatment, namely, psychotherapy. *In re J. E. Clatterbuck* v. *D. W. Harris, Superintendent, etc.* (1968, 295 F. Supp. 84).

Substantial injury

In this case on remand of habeas corpus petition of person committed under sections 22–3501 to 22–3511, if court determines that petitioner was not mentally ill then it must decide whether person, an admitted sexual psychopath under prior construction of these sections, was dangerous to other persons within new construction and a finding of dangerousness must be based on high probability of substantial injury. *T. B. Cross* v. *D. W. Harris* (1969, 418 F. 2d 1095, 135 U.S. App. D.C. 259).

§ 22–3509. Parole—Discharge.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3503, 22–3505 to 22–3508, 22–3510, 22–3511.

NOTES TO DECISIONS

Habeas corpus

Habeas corpus relief would be available to one involuntarily committed to public hospital as sexual psychopath but who is not receiving reasonably suitable and adequate treatment, and lack of such treatment could not be justified by lack of staff or facilities. *M. I. Millard* v. *D. C. Cameron, Sup't etc.* (1966, 373 F. 2d 468, 125 U.S. App. D.C. 383; rev'd and remanded 406 F. 2d 964).

§ 22–3510. Stay of criminal proceedings.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3503, 22–3505 to 22–3507, 22–3509, 22–3511.

§ 22–3511. Criminal law unchanged.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–3503, 22–3505 to 22–3507, 22–3509, 22–3510.

Chapter 36.—IMPLEMENTS OF CRIME

§ 22–3601. Possession of implements of crime—Penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24–203.

NOTES TO DECISIONS

Burden of proof

It was not incumbent on the prosecution, in a case involving possession of implements of crime, wherein possession of a large quantity of narcotic paraphernalia was proved, to show that defendant possessor was unable to satisfactorily account for its possession since that was a matter for the defense. *W. J. Johnson* v. *United States* (D.C. App. 1969, 255 A. 2d 494).

Concurrent sentences

Where defendants received concurrent sentences in prosecution for possession of narcotics, possession of implements of crime, unlawful entry and narcotics vagrancy

and evidence was sufficient to support conviction of possession of narcotics and possession of implements of crime, District of Columbia Court of Appeals would not pass upon sufficiency of evidence to support other convictions. *S. Keith, R. L. Payne and T. J. Walker* v. *United States* (D.C. App. 1967, 232 A. 2d 92).

Constitutionality

This section prohibiting possession of any instrument, tool, or other implement that is usually employed, or reasonably may be employed in the commission of any crime, in the absence of a satisfactory account, provides sufficient notice so that persons of ordinary intelligence can ascertain the line separating guilty from innocent acts and therefore is not unconstitutionally vague. *L. F. McKoy* v. *United States* (D.C. App. 1970, 263 A. 2d 645).

This section prohibiting possession of any instrument, tool, or other implement that is usually employed, or reasonably may be employed, in commission of any crime, in the absence of a satisfactory account, is constitutional as applied to nonmedical person, who, on arrest, was found to be in possession of a case containing a wet needle, needle holder and syringe, but without the cooker, and whose statements of intent to use hypodermic and needle for injection of heroin were sufficiently corroborated. *L. F. McKoy* v. *United States* (D.C. App. 1970, 263 A. 2d 649).

Custodial interrogation

Questions addressed to three defendants by arresting officers seeking an explanation for defendants' being in condemned house were noncoercive and not "custodial interrogation" within rule of Miranda v. State of Arizona. *S. Keith, R. L. Payne and T. J. Walker* v. *United States* (D.C. App. 1967, 232 A. 2d 92).

Duty to arrest

When police detectives saw narcotics paraphernalia in possession of defendants, officers were under statutory duty to arrest the offenders immediately. *S. Keith, R. L. Payne and T. J. Walker* v. *United States* (D.C. App. 1967, 232 A. 2d 92).

Elements of offense

To convict under this section (prohibiting possession of any instrument, tool, or other implement that is usually employed, or reasonably may be employed, in the commission of any crime, in the absence of a satisfactory account), the government must prove that the implements are usually or reasonably may be employed in the commission of crime, and that defendant intended to use implements for crime; proof of intent may be either by inference from possession of sinister items, or otherwise. *L. F. McKoy* v. *United States* (D.C. App. 1970, 263 A. 2d 649).

Evidence—Admissibility

Where defendants' arrest for narcotics violations was legal, narcotics paraphernalia seized at time of the arrest was properly admitted in defendants' joint trial for narcotics violations. *S. Keith, R. L. Payne and T. J. Walker* v. *United States* (D.C. App. 1967, 232 A. 2d 92).

—— Suppression of

The denial of a motion to suppress evidence relating to stolen property and to narcotics paraphernalia found on defendants after the arrest for a pedestrian traffic violation was proper. *J. R. West et ano.* v. *United States* (D.C. App. 1969, 249 A. 2d 740).

Intent

Fact that only possible use of complete narcotics "kit", which consisted of a syringe, two needles, a "cooker" and three caps containing traces of heroin, found in defendant's possession was to administer heroin, supplied requisite criminal intent to use such implements in a crime; thus, defendant's conduct fell within proscription of this section prohibiting possession of implements of a crime. *L. F. McKoy* v. *United States* (D.C. App. 1970, 263 A. 2d 645).

In the case, the court held that defendant's admission of his intent to use hypodermic and needle for criminal purpose was sufficiently corroborated and statement was sufficiently trustworthy for admission on proof of intent in prosecution for possession of implements of a crime, since although possession of a wet needle, needle holder and syringe but not the cooker, might not be sufficient to establish corpus delicti, it did constitute substantial independent evidence which would tend to establish trustworthiness of admission by defendant, a nonmedical person, to arresting officer. *L. F. McKoy* v. *United States* (D.C. App. 1970, 263 A. 2d 649).

Satisfactory account

A "satisfactory account" within meaning of this section prohibiting possession of any instrument, tool, or other implement that is usually employed, or reasonably may be employed, in the commission of any crime in the absence of a satisfactory account means a lawful purpose for possessing such implement. *L. F. McKoy* v. *United States* (D.C. App. 1970, 263 A. 2d 645).

The "satisfactory account" clause of this section does not violate the privilege against self-incrimination because of its availability as an affirmative defense. *Id.*

Subject of search

Under the circumstances of this case, it was not unreasonable for officers to seize pistol which, as convicted felon, defendant was forbidden to possess, incidental to authorized search of his apartment for narcotics, in absence of showing that presence of pistol on premises was attributable to eight-day delay in execution of search warrant. *J. E. Curtis* v. *United States* (D.C. App. 1970, 263 A. 2d 653).

Warning of constitutional rights

The case was remanded to determine whether defendant who was convicted of possession of implements of crime had been warned of his constitutional rights by arresting officers before he made incriminating statements. *W. J. Johnson* v. *United States* (D.C. App. 1969, 255 A. 2d 494).

Chapter 37.—WAREHOUSE RECEIPTS

§§ 22–3703, 22–3704.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections (formerly 21–2103, 21–2104) are referred to in section 28–2105.

TITLE 23.—CRIMINAL PROCEDURE

This title was enacted by Pub. L. 91–358, § 210(a), title II, July 29, 1970, 84 Stat. 604.

Chap.		Sec.
1.	General Provisions	23–101
3.	Indictments and Informations	23–301
5.	Warrants and Arrests	23–501
7.	Extradition and Fugitives from Justice	23–701
9.	Fresh Pursuit	23–901
11.	Professional Bondsmen	23–1101
13.	Bail Agency and Pretrial Detention	23–1301
15.	Out-of-State Witnesses	23–1501
17.	Death Penalty	23–1701

CODIFICATION OF TITLE 23 OF DISTRICT OF COLUMBIA CODE

Section 210(a) of Act July 29, 1970, Pub. L. 91–358 provided in part:

"(a) The general and permanent laws of the District of Columbia relating to criminal procedure are revised, codified, and enacted as title 23 of the District of Columbia Code, "Criminal Procedure", and may be cited "D.C. Code, sec.", as follows:"

EFFECTIVE DATE

Section 901(a) of Pub. L. 91–358, 84 Stat. 667, provided: "Except as provided in part E of title I, section 502, and subsection (b) of this section, this Act and the amendments made by this Act [section 210(a) enacted title 23, entitled 'Criminal Procedure'] shall take effect on the first day of the seventh calendar month which begins after the date of its enactment." Also see notes preceding section 11–101.

REPEAL AND PRESERVATION OF RIGHTS AND LIABILITIES

Section 210(b) of Act July 29, 1970, Pub. L. 91–358, provided:

(b) The following provisions of law are repealed on the effective date of this Act, except with respect to rights and duties which matured, penalties which were incurred, and proceedings which were begun before the effective date of this Act:

(1) Sections 397 and 398 of the Revised Statutes of the District of Columbia (D.C. Code, secs. 4–140, 4–141).

(2) The following provision of British law in effect in the District of Columbia: 23 Geo. II, chapter 11, sections 1 and 2 (D.C. Code, secs. 23–204, 23–205).

(3) The following sections of the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901:

(A) Sections 911 to 914 (D.C. Code, secs. 23–301 to 23–304).

(B) Sections 915 to 917 (D.C. Code, secs. 23–201 to 23–203).

(C) Sections 918 to 924 (D.C. Code, secs. 23–107 to 23–113).

(D) Section 926 (D.C. Code, sec. 23–114).

(E) Sections 930 and 931 (D.C. Code, secs. 23–401, 23–402).

(F) Sections 932 and 933 (D.C. Code, secs. 23–101, 23–102).

(G) Sections 935 and 938 (D.C. Code, secs. 23–105, 23–106).

(H) Section 939 (D.C. Code, sec. 23–104).

(I) Section 1200 (D.C. Code, sec. 23–706).

(J) Section 1203 (D.C. Code, sec. 23–705).

(4) Act of January 30, 1925 (43 Stat. 798; D.C. Code, secs. 23–701 to 23–704).

(5) Act of April 21, 1928 (45 Stat. 440; D.C. Code, secs. 23–403 to 23–410).

(6) Act of March 3, 1933 (47 Stat. 1482; D.C. Code, secs. 23–601 to 23–612).

(7) Section 5 of the Act of April 5, 1938 (52 Stat. 198, 199; D.C. Code, sec. 23–505).

(8) Uniform Act on Fresh Pursuit (53 Stat. 1124; D.C. Code, secs. 23–501 to 23–504).

(9) Act of March 5, 1952 (66 Stat. 15; D.C. Code, secs. 23–801 to 23–804).

(10) Sections 207, 402, and 407(b) of the District of Columbia Law Enforcement Act of 1953 (67 Stat. 90, 96, 102, 106; D.C. Code, secs. 23–306, 23–115, and 23–411).

(11) The District of Columbia Bail Agency Act (80 Stat. 327; D.C. Code, secs. 23–901 to 23–909).

(12) Act of July 30, 1968 (82 Stat. 460; D.C. Code, sec. 23–101a).

Chapter 1.—GENERAL PROVISIONS

Sec.
23–101. Conduct of prosecutions.
23–102. Abandonment of prosecution; enlargement of time for taking action.
23–103. Statements prior to sentence.
23–104. Appeals by United States and District of Columbia.
23–105. Challenges to jurors.
23–106. Witnesses for defense; fees.
23–107. Discharge or acquittal of joint defendant during trial in order to be witness.
23–108. Depositions.
23–109. Powers of investigators assigned to United States attorney.
23–110. Remedies on motion attacking sentence.
23–111. Proceedings to establish previous convictions.
23–112. Consecutive and concurrent sentences.

§ 23–101. Conduct of prosecutions

(a) Prosecutions for violations of all police or municipal ordinances or regulations and for violations of all penal statutes in the nature of police or municipal regulations, where the maximum punishment is a fine only, or imprisonment not exceeding one year, shall be conducted in the name of the District of Columbia by the Corporation Counsel for the District of Columbia or his assistants, except as otherwise provided in such ordinance, regulation, or statute, or in this section.

(b) Prosecutions for violations of section 6 of the Act of July 29, 1892 (D.C. Code, sec. 22–1107), relating to disorderly conduct, and for violations of section 9 of that Act (D.C. Code, sec. 22–1112), relating to lewd, indecent, or obscene acts, shall be conducted in the name of the District of Columbia by the Corporation Counsel or his assistants.

(c) All other criminal prosecutions shall be conducted in the name of the United States by the United States attorney for the District of Columbia or his assistants, except as otherwise provided by law.

(d) An indictment or information brought in the name of the United States may include, in addition to offenses prosecutable by the United States, offenses prosecutable by the District of Columbia, and such prosecution may be conducted either solely by the Corporation Counsel or his assistants or solely

by the United States attorney or his assistants if the other prosecuting authority consents.

(e) Separate indictments or informations, or both, charging offenses prosecutable by the District of Columbia and by the United States may be joined for trial if the offenses charged therein could have been joined in the same indictment. Such prosecution may be conducted either solely by the Corporation Counsel or his assistants or solely by the United States attorney or his assistants if the other prosecuting authority consents.

(f) If in any case any question shall arise as to whether, under this section, the prosecution should be conducted by the Corporation Counsel or by the United States attorney, the presiding judge shall forthwith, either on his own motion or upon suggestion of the Corporation Counsel or the United States attorney, certify the case to the District of Columbia Court of Appeals, which court shall hear and determine the question in a summary way. In every such case the defendant or defendants shall have the right to be heard in the District of Columbia Court of Appeals. The decision of such court shall be final. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 604.)

EFFECTIVE DATE

See note preceding section 23–101.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 23–102 and other sections in title 23 in 1967 edition]

Advisory opinions on appeal

Where Court of General Sessions of the District of Columbia granted motion to dismiss disorderly conduct charge on several grounds but subsequently vacated dismissal with respect to jurisdictional ground only and question of prosecutorial authority was certified to Court of Appeals, any action Court of Appeals might take on certified question could not alter dismissal of charges and hence certificate was dismissed. *District of Columbia* v. *M. S. Barry et al.* (1967, 387 F. 2d 860, 128 U.S. App. D.C. 295).

Corporation Counsel's authority to prosecute

Under statute restricting corporation counsel's authority to cases in which punishment is fine only or imprisonment not to exceed one year, corporation counsel lacked authority to initiate prosecution for disorderly conduct which was punishable by fine of not more than $250 or imprisonment of not more than 90 days, or both. *District of Columbia* v. *Mark Grimes* (1968, 404 F. 2d 1337, 131 U.S. App. D.C. 360).

§ 23–102. Abandonment of prosecution; enlargement of time for taking action

If any person charged with a criminal offense shall have been committed or held to bail to await the action of the grand jury and within nine months thereafter the grand jury shall not have taken action on the case, either by ignoring the charge or by returning an indictment, the prosecution of such charge shall be deemed to have been abandoned and the accused shall be set free or his bail discharged, as the case may be: but, the court having jurisdiction to try the offense for which the person has been committed, when practicable and upon good cause shown in writing and upon due notice to the accused, may from time to time enlarge the time for the taking action in such case by the grand jury. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 605.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–103. Statements prior to sentence

Before imposing sentence the court may disclose to the defendant's counsel and to the prosecuting attorney, but not to one and not the other, all or part of any pre-sentencing report submitted to the court in the case. The court also prior to imposing sentence shall afford counsel an opportunity to speak on behalf of the defendant and shall address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment. At any time when the defendant or his counsel addresses the court on the sentence to be imposed, the prosecuting attorney shall, if he wishes, have an equivalent opportunity to address the court and to make a recommendation to the court on the sentence to be imposed and to present information in support of his recommendation. Such information as the defendant or his counsel or the prosecuting attorney may present shall at all times be subject to the applicable rules of mutual discovery. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 605.)

§ 23–104. Appeals by United States and District of Columbia

(a)(1) The United States or the District of Columbia may appeal an order, entered before the trial of a person charged with a criminal offense, which directs the return of seized property, suppresses evidence, or otherwise denies the prosecutor the use of evidence at trial, if the United States attorney or the Corporation Counsel conducting the prosecution for such violation certifies to the judge who granted such motion that the appeal is not taken for purpose of delay and the evidence is a substantial proof of the charge pending against the defendant.

(2) A motion for return of seized property or to suppress evidence shall be made before trial unless opportunity therefor did not exist or the defendant was not aware of the grounds for the motion.

(b) The United States or the District of Columbia may appeal a ruling made during the trial of a person charged with a criminal offense which suppresses or otherwise denies the prosecutor the use of evidence on the ground that it was invalidly obtained, if the United States attorney or the Corporation Counsel conducting the prosecution for such violation certifies to the judge who made the ruling that the appeal is not taken for purpose of delay and that the evidence is a substantial proof of the charge being tried against the defendant. The trial court shall adjourn the trial until the appeal shall be resolved; except that, if the decision on appeal has not been rendered within the ninety-six-hour period following the adjournment of the trial, the trial shall resume on the next day of regular court business following the expiration of the ninety-six-hour period, and the appeal shall be deemed void and without effect.

(c) The United States or the District of Columbia may appeal an order dismissing an indictment or information or otherwise terminating a prosecution in favor of a defendant or defendants as to one or more counts thereof, except where there is an acquittal on the merits.

(d) The United States or the District of Columbia may appeal any other ruling made during the trial

of a person charged with an offense which the United States attorney or the Corporation Counsel certifies as involving a substantial and recurring question of law which requires appellate resolution. Such an appeal may be taken only during the trial and only with leave of the court. The trial court shall adjourn the trial until the appeal shall be resolved; except that, if the decision on appeal has not been rendered within the ninety-six-hour period following the adjournment of the trial, the trial shall resume on the next day of regular court business following the expiration of the ninety-six-hour period, and the appeal shall be deemed void and without effect.

(e) Any appeal taken pursuant to this section either before or during trial shall be expedited. If an appeal is taken pursuant to subsection (b) or (d) during trial, the appellate court shall hear argument on such appeal within forty-eight hours of the adjournment of the trial pursuant to that subsection shall dispense with any requirement of written briefs other than the supporting materials previously submitted to the trial court, shall render its decision within forty-eight hours of argument on appeal, and may dispense with the issuance of a written opinion in rendering its decision. Such appeal and decision shall not affect the right of the defendant, in a subsequent appeal from a judgment of conviction, to claim as error reversal by the trial court on remand of a ruling appealed from during trial.

(f) Pending the prosecution and determination of an appeal taken pursuant to this section, the defendant shall be detained or released in accordance with chapter 13 of this title. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 606.)

EFFECTIVE DATE

See note preceding section 23–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–721.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 23–105 in 1967 Edition]

Appeal by United States

An appeal by the United States from an order granting motion to suppress a pistol, the Court reversed and held that where the defendant was acting in a suspicious manner outside store, officers who were at store to investigate earlier robbery acted reasonably in asking defendant for identification and in seizing pistol as defendant disclosed its presence in the form of a bulge under his waistband while pulling his coat aside in an apparent effort to reach toward his rear pocket and, therefore, the pistol was admissible in prosecution for carrying a pistol without a license. *United States* v. *L. T. Lee* (D.C. App. 1970, 271 A. 2d 566).

Certification to Supreme Court

In this case the Supreme Court held that certification to it under the Federal Criminal Appeals Act (18 U.S.C. 3731) was not proper since (1) the Government's appeal to the Court of Appeals for the District of Columbia circuit from dismissal of indictment by a District Court in the District of Columbia was not pursuant to that Act but rather expressly pursuant to this section, which contains no provision allowing transfer to the Supreme Court, and (2) the Court of Appeals made no determination that it lacked jurisdiction to hear the Government's appeal under this section; and returned the case to the Court of Appeals for further proceedings. *United States* v. *P. E. Sweet* (1970, 90 S. Ct. 1958, 399 U.S. 517).

Evidence—Admissibility

Since the police officers had what they believed was credible information that defendant who fit description given officers had a gun in his pocket, since defendant was reluctant to remove his hand from his pocket, and since there was obvious large bulge in pocket when he did remove his hand, officers were justified in conducting a limited protective search for weapons, and removal of currency and numbers slips by officer who claimed to have found gun was reasonable and fact numbers slips and money rather than gun were removed from pocket did not render those items inadmissible. *United States* v. *M. Dowling* (D.C. App. 1970, 271 A. 2d 406).

§ 23–105. Challenges to jurors

(a) In a trial for an offense punishable by death, each side is entitled to twenty peremptory challenges. In a trial for an offense punishable by imprisonment for more than one year, each side is entitled to ten peremptory challenges. In all other criminal cases, each side is entitled to three peremptory challenges. If there is more than one defendant, or if a case is prosecuted both by the United States and by the District of Columbia, the court may allow additional peremptory challenges and permit them to be exercised separately or jointly, but in no event shall one side be entitled to more peremptory challenges than the other.

(b) The court may direct that jurors in addition to the regular jury be called and impaneled to sit as alternate jurors. In addition to those otherwise allowed, each side is entitled to one peremptory challenge if one or two alternate jurors are to be impaneled, to two peremptory challenges if three or four alternate jurors are to be impaneled, and to three peremptory challenges if five or six alternate jurors are to be impaneled.

(c) Any juror or alternate juror may be challenged for cause.

(d) No verdict shall be set aside for any cause which might be alleged as ground for challenge of a juror before the jury is sworn, except when the objection to the juror is that he had a bias against the defendant such as would have disqualified him, such disqualification was not known to or suspected by the defendant or his counsel before the juror was sworn, and the basis for such disqualification was the subject of examination or request for examination of the prospective jurors by or on request of the defendant. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 607.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–106. Witnesses for defense; fees

The court shall order at any time that a subpoena be issued for service upon a named witness on behalf of a defendant if the defendant makes an application for such an order and makes a satisfactory showing that he is financially unable to pay the fees of the witness and that the presence of the witness is necessary to an adequate defense. If the court orders the subpoena to be issued the costs incurred by the process and the fees of the witness so subpoenaed shall be paid in the same manner in which similar costs and fees are paid in case of a witness subpoenaed in behalf of the prosecuting authority. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 607.)

§ 23–107. Discharge or acquittal of joint defendant during trial in order to be witness

(a) When two or more persons are jointly indicted or charged by information, or charged by separate indictments or informations which have been joined for trial, the court may, with the consent of the prosecuting authority, direct that a defendant who has not gone into his defense be discharged so that he may be a witness for the prosecution.

(b) When two or more persons are jointly tried, a person desiring that another defendant testify on his behalf may request a judgment of acquittal on behalf of such defendant, which the court shall consider in the same manner as a motion made by such defendant.

(c) At the request of a defendant who wishes to testify on behalf of another person with whom he is jointly tried, if the evidence against such defendant is sufficient to be submitted to the jury and if such other person consents, the court may submit the case concerning such defendant to the jury separately so that his testimony may not be considered against him by such jury.

(d) A discharge granted pursuant to subsection (a), or an acquittal secured pursuant to subsection (b) or (c), shall be a bar to another prosecution for the same offense of the defendant so discharged or acquitted. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 607.)

§ 23–108. Depositions.

(a) If a material witness for either the prosecution or the defendant resides more than twenty-five miles from the place of holding court, is sick or infirm, or is about to leave the District of Columbia, and the prosecution or the defendant applies in writing to the court for a commission to examine such witness, the court may grant the commission, and enter an order stating for what length of time notice shall be given to the other party before such witness shall be examined. At or before the time fixed in the notice, when the examination is upon written interrogatories, the other party may file cross-interrogatories. When the examination is conducted orally, the other party may cross-examine the deponent. If the other party fails to file written interrogatories or fails to attend an oral examination, the clerk shall file the following interrogatories:

"(1) Are all your statements in the foregoing answers made from your own personal knowledge? If not, show what is stated upon information and give its source.

"(2) State everything you know in addition to what is stated in your above answers concerning this case favorable to either the prosecution or the defendant."

(b) The court may order in any case that the examination be conducted orally.

(c) The commission shall issue from the clerk's office, the examination of the witnesses shall be made and certified, and the return thereof made in the same manner as in civil cases, and unimportant irregularities or errors in the proceedings under the commission shall not cause the deposition to be excluded where no substantial prejudice can be wrought to the prosecution or the defendant by such irregularities or errors.

(d) Copies of the depositions or answers to interrogatories shall be made available to all of the parties upon the completion of the examination. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 608.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–109. Powers of investigators assigned to United States attorney

Any special investigator appointed by the Attorney General and assigned to the United States attorney for the District shall have authority to execute all lawful writs, process, and orders issued under authority of the United States, and command all necessary assistance to execute his duties, and shall have the same powers to make arrests as are possessed by members of the Metropolitan Police Department of the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 608.)

§ 23–110. Remedies on motion attacking sentence

(a) A prisoner in custody under sentence of the Superior Court claiming the right to be released upon the ground that (1) the sentence was imposed in violation of the Constitution of the United States or the laws of the District of Columbia, (2) the court was without jurisdiction to impose the sentence, (3) the sentence was in excess of the maximum authorized by law, (4) the sentence is otherwise subject to collateral attack, may move the court to vacate, set aside, or correct the sentence.

(b) A motion for such relief may be made at any time.

(c) Unless the motion and files and records of the case conclusively show that the prisoner is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting authority, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto. If the court finds that (1) the judgment was rendered without jurisdiction, (2) the sentence imposed was not authorized by law or is otherwise open to collateral attack, (3) there has been such a denial or infringement of the constitutional rights of the prisoner as to render the judgment vulnerable to collateral attack, the court shall vacate and set the judgment aside and shall discharge the prisoner, resentence him, grant a new trial, or correct the sentence, as may appear appropriate.

(d) A court may entertain and determine the motion without requiring the production of the prisoner at the hearing.

(e) The court shall not be required to entertain a second or successive motion for similar relief on behalf of the same prisoner.

(f) An appeal may be taken to the District of Columbia Court of Appeals from the order entered on the motion as from a final judgment on application for a writ of habeas corpus.

(g) An application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for

relief by motion pursuant to this section shall not be entertained by the Superior Court or by any Federal or State court if it appears that the applicant has failed to make a motion for relief under this section or that the Superior Court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 608.)

§ 23–111. Proceedings to establish previous convictions

(a)(1) No person who stands convicted of an offense under the laws of the District of Columbia shall be sentenced to increased punishment by reason of one or more previous convictions, unless prior to trial or before entry of a plea of guilty, the United States attorney or the Corporation Counsel, as the case may be, files an information with the clerk of the court, and serves a copy of such information on the person or counsel for the person, stating in writing the previous convictions to be relied upon. Upon a showing by the Government that facts regarding previous convictions could not with due diligence be obtained prior to trial or before entry of a plea of guilty, the court may postpone the trial or the taking of the plea of guilty for a reasonable period for the purpose of obtaining such facts. Clerical mistakes in the information may be amended at any time prior to the pronouncement of sentence.

(2) An information may not be filed under this section if the increased punishment which may be imposed is imprisonment for a term in excess of three years, unless the person either waived or was afforded prosecution by indictment for the offense for which such increased punishment may be imposed.

(b) If the prosecutor files an information under this section, the court shall, after conviction but before pronouncement of sentence, inquire of the person with respect to whom the information was filed whether he affirms or denies that he has been previously convicted as alleged in the information, and shall inform him that any challenge to a previous conviction which is not made before sentence is imposed may not thereafter be raised to attack the sentence.

(c)(1) If the person denies any allegation of the information of previous conviction, or claims that any conviction alleged is invalid, he shall file a written response to the information. A copy of the response shall be served upon the prosecutor. The court shall hold a hearing to determine any issues raised by the response which would except the person from increased punishment. The failure of the Government to include in the information the complete criminal record of the person or any facts in addition to the convictions to be relied upon shall not constitute grounds for invalidating the notice given in the information required by subsection (a)(1). The hearing shall be before the court without a jury and either party may introduce evidence. Except as otherwise provided in paragraph (2) of this subsection, the prosecuting authority shall have the burden of proof beyond a reasonable doubt on any issue of fact. At the request of either party, the court shall enter findings of fact and conclusions of law.

(2) A person claiming that a conviction alleged in the information was obtained in violation of the Constitution of the United States shall set forth his claim, and the factual basis therefor, with particularity in his response to the information. The person shall have the burden of proof by a preponderance of the evidence on any issue of fact raised by the response. Any challenge to a previous conviction, not raised by response to the information before an increased sentence is imposed in reliance thereon, shall be waived unless good cause be shown for failure to make a timely challenge.

(d)(1) If the person files no response to the information, or if the court determines, after hearing, that the person is subject to increased punishment by reason of previous convictions, the court shall proceed to impose sentence upon him as provided by law.

(2) If the court determines that the person has not been convicted as alleged in the information, that a conviction alleged in the information is invalid, or that the person is otherwise not subject to an increased sentence as a matter of law, the court shall, at the request of the prosecutor, postpone sentence to allow an appeal from that determination. If no such request is made, the court shall impose sentence as provided by law. The person may appeal from an order postponing sentence as if sentence had been pronounced and a final judgment of conviction entered. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 609.)

EFFECTIVE DATE

See note preceding section 23–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–721.

§ 23–112. Consecutive and concurrent sentences.

A sentence imposed on a person for conviction of an offense shall, unless the court imposing such sentence expressly provides otherwise, run consecutively to any other sentence imposed on such person for conviction of an offense, whether or not the offense (1) arises out of another transaction, or (2) arises out of the same transaction and requires proof of a fact which the other does not. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 610.)

Chapter 3.—INDICTMENTS AND INFORMATIONS

SUBCHAPTER I.—GENERAL PROVISIONS

Sec.
23–301. Prosecution by indictment or information.

SUBCHAPTER II.—JOINDER

23–311. Joinder of offenses and of defendants.
23–312. Joinder of indictments or informations for trial.
23–313. Relief from prejudicial joinder.
23–314. Joinder of inconsistent offenses concerning the same property.

SUBCHAPTER III.—SUFFICIENCY

23–321. Description of money.
23–322. Intent to defraud.
23–323. Perjury.
23–324. Subornation of perjury.

SUBCHAPTER I.—GENERAL PROVISIONS

§ 23–301. Prosecution by indictment or information

An offense prosecuted in the Superior Court which may be punished by death shall be prosecuted by indictment returned by a grand jury. An offense which may be punished by imprisonment for a term exceeding one year shall be prosecuted by indictment, but it may be prosecuted by information if the defendant, after he has been advised of the nature of the charge and of his rights, waives in open court prosecution by indictment. Any other offense may be prosecuted by indictment or by information. An information subscribed by the proper prosecuting officer may be filed without leave of court. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 611.)

EFFECTIVE DATE

See note preceding section 23–101.

SUBCHAPTER II.—JOINDER

§ 23–311. Joinder of offenses and of defendants

(a) Two or more offenses may be charged in the same indictment or information in a separate count for each offense if the offenses charged, whether felonies or misdemeanors or both, are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.

(b) Two or more offenses may be charged in the same indictment or information as provided in subsection (a) even though one or more is in violation of the laws of the United States and another is in violation of the laws applicable exclusively to the District of Columbia and may be prosecuted as provided in section 11–502(3).

(c) Two or more defendants may be charged in the same indictment or information if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses. Such defendants may be charged in one or more counts together or separately and all of the defendants need not be charged in each count. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 611.)

§ 23–312. Joinder of indictments or informations for trial

The court may order two or more indictments or informations or both to be tried together if the offenses, and the defendants if there is more than one, could have been joined in a single indictment or information. The procedure shall be the same as if the prosecution were under such single indictment or information. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 611.)

§ 23–313. Relief from prejudicial joinder

If it appears that a defendant or the government is prejudiced by a joinder of offenses or of defendants in an indictment or information or by such joinder for trial together, the court may order an election or separate trials of counts, grant a severance of defendants, or provide whatever other relief justice requires. In ruling on a motion by a defendant for severance the court may order the attorney for the government to deliver to the court for inspection in camera any statements or confessions made by the defendants which the government intends to introduce in evidence at the trial. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 611.)

§ 23–314. Joinder of inconsistent offenses concerning the same property

An indictment or information may contain a count for larceny, a count for obtaining the same property by false pretenses, a count for embezzlement thereof, and a count for receiving or concealing the same property, knowing it to be stolen or embezzled, or any of such counts, and the jury may convict of any of such offenses, and may find any or all of the persons indicted guilty of any of said offenses. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 611.)

EFFECTIVE DATE

See note preceding section 23–101.

SUBCHAPTER III.—SUFFICIENCY

§ 23–321. Description of money

In every indictment or information, except for forgery, in which it is necessary to make an averment as to any money or bank bill or notes, United States Treasury notes, postal and fractional currency, or other bills, bonds, or notes, issued by lawful authority and intended to pass and circulate as money, it shall be sufficient to describe such money, bills, notes, currency, or bonds simply as money, without specifying any particular coin, note, bill, or bond; and such allegation shall be sustained by proof that the accused has stolen or embezzled any amount of coin, or any such note, bill, currency, or bond, although the particular amount or species of such coin, note, bill, currency, or bond be not proved. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 612.)

§ 23–322. Intent to defraud

In an indictment or information in which it is necessary to allege an intent to defraud, it shall be sufficient to allege that the party accused did the act complained of with intent to defraud, without alleging an intent to defraud any particular person or body corporate. On the trial of such an indictment or information it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove a general intent to defraud. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 612.)

§ 23–323. Perjury

In every information or indictment for perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, and by what court, or before whom the oath was taken (averring such court, or person or persons, to have a competent authority to administer the same) together with the proper averment or averments to falsify the matter or matters wherein the perjury or perjuries is or are assigned; without setting forth the bill, answer, information, indictment, declaration, or any part of any record of proceeding either in law or equity, other than as aforesaid; and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed;

any law, usage, or custom to the contrary notwithstanding. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 612.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–324. Subordination[1] of perjury

In every information or indictment for subornation of perjury, or for corrupt bargaining or contracting with others to commit perjury, it shall be sufficient to set forth the substance of the offense charged upon the defendant, without setting forth the bill, answer, information, indictment, declaration, or any part of any record or proceeding either in law or equity, and without setting forth the commission or authority of the court, or person or persons before whom the perjury was committed, or was agreed or promised to be committed, any law, usage, or custom to the contrary notwithstanding. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 612.)

Chapter 5.—WARRANTS AND ARRESTS

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SUBCHAPTER VI.—AUTHORITY TO BREAK AND ENTER UNDER CERTAIN CONDITIONS

Sec.
23–591. Authority to break and enter under certain conditions.

SUBCHAPTER I.—DEFINITIONS

§ 23–501. Definitions.

As used in subchapters II, IV, and V of this chapter—

(1) The term "judicial officer" means a judge of the Superior Court of the District of Columbia or of the United States District Court for the District of Columbia, or a United States commissioner or magistrate for the District of Columbia.

(2) The term "law enforcement officer" means an officer or member of the Metropolitan Police Department of the District of Columbia or of any other police force operating in the District of Columbia, or an investigative officer or agent of the United States.

(3) The term "prosecutor" means the United States Attorney for the District of Columbia or his assistant, the Corporation Counsel of the District of Columbia or his assistant, or an attorney employed by, and who has entered an appearance on behalf of, the United States or the District of Columbia in a criminal case or in an investigation being conducted by a grand jury.

(July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 613.)

REFERENCE IN TEXT

The Act of Oct. 17, 1968, Pub. L. 90–578, terminated the office of United States commissioner and established in place thereof the office of United States magistrate. The Act became operative in the District of Columbia on June 27, 1969, when two United States magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969. See §§ 401(a) and 402(a)(b) of said Act (28 U.S.C. 631 note).

EFFECTIVE DATE

See note preceding section 23–101.

SUBCHAPTER II.—SEARCH WARRANTS

§ 23–521. Nature and issuance of search warrants.

(a) Under circumstances described in this subchapter, a judicial officer may issue a search warrant upon application of a law enforcement officer or prosecutor. A warrant may authorize a search to be conducted anywhere in the District of Columbia and may be executed pursuant to its terms.

(b) A search warrant may direct a search of any or all of the following:

(1) one or more designated or described places or premises;

(2) one or more designated or described vehicles;

(3) one or more designated or described physical objects; or

(4) designated persons.

(c) A search warrant may direct the seizure of designated property or kinds of property, and the seizure may include, to such extent as is reasonable under all the circumstances, taking physical or other impressions, or performing chemical, scientific, or other tests or experiments of, from, or upon designated premises, vehicles, or objects.

[1] So in original, does not conform to chapter analysis.

[2] Section 252 of Act Oct. 15, 1970, Pub. L. 91–452, repealed § 23–545 without amending the chapter analysis.

(d) Property is subject to seizure pursuant to a search warrant if there is probable cause to believe that it—

(1) is stolen or embezzled;

(2) is contraband or otherwise illegally possessed;

(3) has been used or is possessed for the purpose of being used, or is designed or intended to be used, to commit or conceal the commission of a criminal offense; or

(4) constitutes evidence of or tends to demonstrate the commission of an offense or the identity of a person participating in the commission of an offense.

(e) A search warrant may be addressed to a specific law enforcement officer or to any classification of officers of the Metropolitan Police Department of the District of Columbia or other agency authorized to make arrests or execute process in the District of Columbia.

(f) A search warrant shall contain—

(1) the name of the issuing court, the name and signature of the issuing judicial officer, and the date of issuance;

(2) if the warrant is addressed to a specific officer, the name of that officer, otherwise, the classifications of officers to whom the warrant is addressed;

(3) a designation of the premises, vehicles, objects, or persons to be searched, sufficient for certainty of identification;

(4) a description of the property whose seizure is the object of the warrant;

(5) a direction that the warrant be executed during the hours of daylight or, where the judicial officer has found cause therefor, including one of the grounds set forth in section 23–522(c)(1), an authorization for execution at any time of day or night;

(6) where the judicial officer has found cause therefor, including one of the grounds set forth in subparagraph (A), (B), or (D) of section 23–591(c)(2), an authorization that the executing officer may break and enter the dwelling house or other building or vehicles to be searched without giving notice of his identity and purpose; and

(7) a direction that the warrant and an inventory of any property seized pursuant thereto be returned to the court on the next court day after its execution.

(July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 614.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–522, 23–523, 23–524.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 23–301 and other sections in title 23 in 1967 edition]

Sufficiency of warrant

It was not in the interests of justice that Court of Appeals entertain for the first time on appeal objection that warrant authorizing search for and seizure of described clothing worn by defendant at the time of alleged crime did not comply with requirements of a federal rule specifying property for which a search warrant may be issued. *W. H. Fuller* v. *United States* (1968, 407 F. 2d 1199, 132 U.S. App. D.C. 264; cert. denied 89 S. Ct. 999).

§ 23–522. Applications for search warrants

(a) Each application for a search warrant shall be made in writing upon oath or affirmation to a judicial officer.

(b) Each application shall include—

(1) the name and title of the applicant;

(2) a statement that there is probable cause to believe that property of a kind or character described in section 23–521(d) is likely to be found in a designated premise, in a designated vehicle or object, or upon designated persons;

(3) allegations of fact supporting such statement; and

(4) a request that the judicial officer issue a search warrant directing a search for and seizure of the property in question.

The applicant may also submit depositions or affidavits of other persons containing allegations of fact supporting or tending to support those contained in the application.

(c) The application may also contain—

(1) a request that the search warrant be made executable at any hour of the day or night, upon the ground that there is probable cause to believe that (A) it cannot be executed during the hours of daylight, (B) the property sought is likely to be removed or destroyed if not seized forthwith, or (C) the property sought is not likely to be found except at certain times or in certain circumstances; and

(2) a request that the search warrant authorize the executing officer to break and enter dwelling houses or other buildings or vehicles to be searched without giving notice of his identity and purpose, upon probable cause to believe that one of the conditions set forth in subparagraph (A), (B), or (D) of section 23–591(c)(2) is likely to exist at the time and place at which such warrant is to be executed.

Any request made pursuant to this subsection must be accompanied and supported by allegations of fact supporting such request. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 615.)

EFFECTIVE DATE

See note preceding section 23–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–521.

§ 23–523. Time of execution of search warrants

(a) A search warrant shall not be executed more than ten days after the date of issuance and shall be returned to the court after its execution or expiration in accordance with section 23–521(f)(7).

(b) A search warrant may be executed on any day of the week and, in the absence of express authorization in the warrant pursuant to section 23–521(f)(5), shall be executed only during the hours of daylight. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 615.)

§ 23–524. Execution of search warrants

(a) An officer executing a warrant directing a search of a dwelling house or other building or a vehicle shall execute such warrant in accordance with section 23–591.

(b) An officer executing a warrant directing a search of a person shall give, or make reasonable effort to give, notice of his identity and purpose to the person, and, if such person thereafter resists or refuses to permit the search, such person shall be subject to arrest by such officer pursuant to section 23–581(a) for violation of section 432 of the Revised Statutes of the United States relating to the District of Columbia (D.C. Code, sec. 22–505) (resisting a police officer) or other applicable provision of law.

(c) (1) An officer or agent executing a search warrant shall write and subscribe an inventory setting forth the time of the execution of the search warrant and the property seized under it.

(2) If the search is of a person, a copy of the warrant and of the return shall be given to that person.

(3) If the search is of a place, vehicle, or object, a copy of the warrant and of the return shall be given to the owner thereof if he is present, or if he is not, to an occupant, custodian, or other person present; or if no person is present, the officer shall post a copy of the warrant and of the return upon the premises, vehicle, or object searched.

(d) A copy of the warrant shall be filed with the court whose judge or magistrate authorized its issuance on the next court day after its execution, together with a copy of the return.

(e) An officer or agent executing a search warrant may seize any property discovered in the course of the lawful execution of such warrant if he has probable cause to believe that such property is subject to seizure under section 23–521(d), even if the property is not enumerated in the warrant or the application therefor, and no additional warrant shall be required to authorize such seizure, if the property is fully set forth in the return. Such seizure may include taking physical or other impressions or performing chemical, scientific, or other tests or experiments.

(f) An officer or agent executing a search warrant may take photographs and measurements during the execution.

(g) An officer executing a warrant directing a search of premises or a vehicle may search any person therein (1) to the extent reasonably necessary to protect himself or others from the use of any weapon which may be concealed upon the person, or (2) to the extent reasonably necessary to find property enumerated in the warrant which may be concealed upon the person. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 615.)

§ 23–525. Disposition of property

An officer or agent who seizes property in the execution of a search warrant shall cause it to be safely kept for use as evidence. No property seized shall be released or destroyed except in accordance with law and upon order of a court or of the United States attorney or Corporation Counsel for the District of Columbia or one of their assistants. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 616.)

EFFECTIVE DATE

See note preceding section 23–101.

SUBCHAPTER III.—WIRE INTERCEPTION AND INTERCEPTION OF ORAL COMMUNICATIONS

§ 23–541. Definitions

As used in this subchapter—

(1) the term "wire communication" means any communication made in whole or in part through the use of facilities for the transmission of communications by the aid of wire, cable, or other like connection between the point of origin and the point of reception furnished or operated by any person engaged as a common carrier in providing or operating such facilities;

(2) the term "oral communication" means any oral communication uttered by a person exhibiting an expectation that the communication is not subject to interception under circumstances justifying the expectation;

(3) the term "intercept" means the aural acquisition of the contents of any wire or oral communication through the use of any intercepting device;

(4) the term "intercepting device" means any electronic, mechanical, or other device or apparatus which can be used to intercept a wire or oral communication other than—

(A) any telephone or telegraph instrument, equipment, or facility, or any component thereof, (i) furnished to the subscriber or user by a communications common carrier in the ordinary course of its business and being used by the subscriber or user in the ordinary course of its business; or (ii) being used by a communications common carrier in the ordinary course of its business, or by an investigative or law enforcement officer in the ordinary course of his duties; or

(B) a hearing aid or similar device being used to correct subnormal hearing to not better than normal;

(5) the term "investigative or law enforcement officer" means any officer of the United States or of the District of Columbia who is empowered by law to conduct investigations of or to make arrests for offenses enumerated in this subchapter, and any attorney authorized by law to prosecute or participate in the prosecution of such offenses;

(6) the term "contents", when used with respect to any wire or oral communication, includes any information concerning the identity of the parties to the communication or the existence, substance, purport, or meaning of that communication;

(7) the term "judge" means a judge of the Superior Court of the District of Columbia, a judge of the District of Columbia Court of Appeals, a judge of the United States District Court for the District of Columbia, and a judge of the United States Court of Appeals for the District of Columbia circuit;

(8) the term "judge of competent jurisdiction" means, in addition to the judges included in paragraph (7)—

(A) a judge of a United States district court or a United States court of appeals not in the District of Columbia; and

(B) a judge of any court of general criminal jurisdiction of a State who is authorized by a statute of that State to enter orders authorizing interceptions of wire or oral communications;

(9) the term "aggrieved person" means a person who was a party to any intercepted wire or oral communication or a person against whom the interception was directed;

(10) the term "communication common carrier" has the same meaning which is given the term "common carrier" by section 3(h) of the Communications Act of 1934 (47 U.S.C. 153(h)); and

(11) the term "United States attorney" means the United States attorney for the District of Columbia or any of his assistants designated by him or otherwise designated by law to act in his place for the particular purpose in question.

(July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 616.)

§ 23–542. Interception, disclosure, and use of wire or oral communications prohibited

(a) Except as otherwise specifically provided in this subchapter, any person who in the District of Columbia—

(1) willfully intercepts, endeavors to intercept, or procures any other person to intercept or endeavor to intercept any wire or oral communication;

(2) willfully discloses or endeavors to disclose to any other person the contents of any wire or oral communication, or evidence derived therefrom, knowing or having reason to know that the information was obtained through the interception of a wire or oral communication; or

(3) willfully uses or endeavors to use the contents of any wire or oral communication, or evidence derived therefrom, knowing or having reason to know, that the information was obtained through the interception of a wire or oral communication;

shall be fined not more than $10,000 or imprisoned not more than five years, or both; except that paragraphs (2) and (3) of this subsection shall not apply to the contents of any wire or oral communication, or evidence derived therefrom, that has become common knowledge or public information.

(b) It shall not be unlawful under this section for—

(1) an operator of a switchboard, or an officer, agent, or employee of a communication common carrier, whose facilities are used in the transmission of a wire communication, to intercept, disclose, or use that communication, in the normal course of his employment while engaged in any activity which is a necessary incident to the rendering of his service or to the protection of the rights or property of the carrier of such communication, or to provide information, facilities, or technical assistance to an investigative or law enforcement officer who, under this subchapter, is authorized to intercept a wire or oral communication, but no communication common carrier shall utilize service observing or random monitoring except for mechanical or service quality control checks;

(2) a person acting under color of law to intercept a wire or oral communication, where such person is a party to the communication, or where one of the parties to the communication has given prior consent to such interception; or

(3) a person not acting under color of law to intercept a wire or oral communication, where such person is a party to the communication, or where one of the parties to the communication has given prior consent to such interception, unless such communication is intercepted for the purpose of committing any criminal or tortious act in violation of the Constitution or laws of the United States, any State, or the District of Columbia, or for the purpose of committing any other injurious act.

(July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 617.)

EFFECTIVE DATE

See note preceding section 23–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–544, 23–556.

§ 23–543. Possession, sale, distribution, manufacture, assembly, and advertising of wire or oral communication intercepting devices prohibited

(a) Except as otherwise specifically provided in subsection (b) of this section, any person who in the District of Columbia—

(1) willfully possesses, sells, distributes, manufactures, or assembles an intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication; or

(2) willfully places in any newspaper, magazine, handbill, or other publication any advertisement of—

(A) any intercepting device, the design of which renders it primarily useful for the purpose of the surreptitious interception of a wire or oral communication; or

(B) any intercepting device where such advertisement promotes the use of such device for the purpose of the surreptitious interception of a wire or oral communication;

shall be fined not more than $10,000 or imprisoned not more than five years, or both.

(b) It shall not be unlawful under this section for—

(1) a communication common carrier or an officer, agent, or employee of, or a person under contract with a communication common carrier, in the usual course of the communication common carrier's business; or

(2) a person under contract with the Government of the United States, a State or a political subdivision thereof, or the District of Columbia, or an officer, agent, or employee of the Government of the United States, a State or a political subdivision thereof, or the District of Columbia;

to possess, sell, distribute, manufacture or assemble, or advertise any intercepting device, while acting in furtherance of the appropriate activities of the

United States, a State or political subdivision thereof, the District of Columbia, or a communication common carrier. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 618.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–544, 23–556.

§ 23–544. Confiscation of wire or oral communication intercepting devices

Any intercepting device in the District of Columbia—

(1) possessed;
(2) used;
(3) sold;
(4) distributed; or
(5) manufactured or assembled;

in violation of section 23–542 or 23–543 may be seized and forfeited to the District of Columbia. Insofar as applicable and not inconsistent with the provisions of this chapter, all provisions of law relating to the seizure, summary and judicial forfeiture, and condemnation of property for violation of the customs laws; the disposition of such property; the remission or mitigation of such forfeitures; the compromise of claims; and the award of compensation to informers in respect of such forfeitures shall apply to seizures and forfeitures incurred, or alleged to have been incurred, under the provisions of this title; except that such duties as are imposed upon the customs officer or any other person with respect to the seizure and forfeiture of property under the customs laws shall be performed with respect to seizures and forfeitures of property under this section by such officers, agents or other persons as may be authorized or designated for that purpose by the Commissioner, except to the extent that such duties arise from seizures and forfeitures effected by any customs officer. The proceeds from the sale of any property forfeited under this section shall be deposited in the Treasury to the credit of the general fund of the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 619.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–545. Repealed. Oct. 15, 1970, Pub. L. 91–452, title II, § 252, 84 Stat. 931

CODIFICATION

This section was enacted as a part of the revision and codification of title 23 by sec. 210(a) of Act July 29, 1970, Pub. L. 91–358, 84 Stat. 604, 619. For effective date of the section, see note preceding § 23–101. As so enacted, the section read as follows:

"§ 23–545. Immunity of witnesses

"(a) Whenever a witness refuses, on the basis of his privilege against self-incrimination, to testify or provide other information in a proceeding beore a court or grand jury in the District of Columbia involving any violation of this subchapter and the person presiding over the proceeding communicates to the witness an order issued under this section, the witness may not refuse to comply with the order on the basis of his privilege against self-incrimination. But no testimony or other information compelled under the order issued under subsection (b) of this section, or any information obtained by the exploitation of such testimony or other information, may be used against the witness in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with the order.

"(b) In the case of any individual who has been or may be called to testify or provide other information at any proceeding before a court or grand jury in the District of Columbia, the court before which the proceeding is or may be held shall issue, upon the request of the United States attorney, an order requiring such individual to give any testimony or provide any other information which he refuses to give or provide on the basis of his privilege against self-incrimination.

"(c) The United States attorney may, with the approval of the Attorney General or the Deputy Attorney General, or any Assistant Attorney General designated by the Attorney General, request an order under subsection (b) when in the judgment of the United States attorney—

"(1) the testimony or other information from such individual may be necessary to the public interest; and

"(2) such individual has refused or is likely to refuse to testify or provide other information on the basis of his privilege against self-incrimination."

EFFECTIVE DATE OF REPEAL AND SAVINGS CLAUSE

Sec. 260 of Act Oct. 15, 1970, Pub. L. 91–452, provided: "The provisions of part V of title 18, United States Code, added by title II of this Act, and the amendments and repeals made by title II of this Act [sections 252 to 258 amended secs. 22–2717 and 22–2720 and repealed secs. 22–2721, 23–545, 35–802, 35–1129, and 35–1346], shall take effect on the sixtieth day following the date of enactment of this Act. No amendment to or repeal of any provision of law under title II of this Act shall affect any immunity to which any individual is entitled under such provision by reason of any testimony or other information given before such day."

CROSS REFERENCE

For general immunity statute, see 18 U.S.C. 6002.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–556.

§ 23–546. Applications for authorization or approval of interception of wire or oral communications

(a) The United States attorney may authorize, in writing, any investigative or law enforcement officer to make application to a court for an order authorizing the interception of wire or oral communications.

(b) The United States attorney may authorize, in writing, any investigative or law enforcement officer to make application to a court for an order of approval of the previous interception of any wire or oral communication, when the contents of such communication—

(1) relate to an offense other than that specified in an order of authorization;

(2) were intercepted in an emergency situation; or

(3) were intercepted in an emergency situation and relate to an offense other than that contemplated at the time the interception was made.

(c) An application for an order of authorization (as provided in subsection (a) of this section) or of approval (as provided in paragraph (2) of subsection (b) of this section) may be authorized only when the interception of wire or oral communications may provide or has provided evidence of the commission of or a conspiracy to commit any of the following offenses:

(1) Any of the offenses specified in the Act entitled "An Act to establish a code of law for the Dis-

trict of Columbia", approved March 3, 1901, and listed in the following table:

Offense:	Specified in—
Arson	sections 820, 821 (D.C. Code, secs. 22–401, 22–402).
Blackmail	section 819 (D.C. Code, sec. 22–2305).
Bribery	section 861 (D.C. Code, sec. 22–701).
Burglary	section 823 (D.C. Code, sec. 22–1801).
Destruction of property of value in excess of $200.	section 848 (D.C. Code, sec. 22–403).
Gambling	sections 863, 866, 869e (D.C. Code, secs. 22–1501, 22–1505, 22–1513).
Grand larceny	section 826 (D.C. Code, sec. 22–2201).
Kidnapping	section 812 (D.C. Code, sec. 22–2101).
Murder	sections 798, 800 (D.C. Code, secs. 22–2401, 22–2403).
Obstruction of justice	section 862 (D.C. Code, sec. 22–703).
Receiving stolen property of value in excess of $100.	section 829 (D.C. Code, sec. 22–2205).
Robbery	section 810 (D.C. Code, sec. 22–2901).

(2) Bribery as specified (A) in the second paragraph under the center heading "General Expenses" in the first section of the Act of July 1, 1902 (D.C. Code, sec. 22–702), and (B) in the Act of February 26, 1936 (D.C. Code, sec. 22–704).

(3) Extortion and threats as specified in sections 1501 and 1502 of the Omnibus Crime Control and Safe Streets Act of 1968 (D.C. Code, secs. 22–2306, 22–2307).

(4) Offenses involving dealing in narcotic drugs, marihuana, and other dangerous drugs as specified in sections 2 and 16 of the Uniform Narcotic Drug Act (D.C. Code, secs. 33–402, 33–416) and section 203 of the Dangerous Drug Act for the District of Columbia (D.C. Code, sec. 33–702). (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 620.)

EFFECTIVE DATE

See note preceding section 23–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–547, 23–556.

§ 23–547. Procedure for authorization or approval of interception of wire or oral communications

(a) Each application for an order authorizing or approving the interception of a wire or oral communication shall be made in writing upon oath or affirmation to a judge and shall state the applicant's authority to make the application. Each application shall include—

(1) the identity of the investigative or law enforcement officer making the application, and the officer authorizing the application;

(2) a full and complete statement of the facts and circumstances relied upon by the applicant to justify his belief that an order should be issued, including (A) details as to the particular offense that has been, is being, or is about to be committed, (B) a particular description of the nature and location of the facilities from which or the place where the communication is to be or was intercepted, (C) a particular description of the type of communications sought to be or which were intercepted, and (D) the identity of the person, if known, who committed, is committing, or is about to commit the offense and whose communications are to be or were intercepted;

(3) a full and complete statement as to whether or not other investigative procedures have been tried and failed or why they reasonably appear or appeared to be unlikely to succeed if tried or to be too dangerous;

(4) a statement of the period of time for which the interception is or was required to be maintained, and if the nature of the investigation is or was such that the authorization for interception should not automatically terminate or should not have automatically terminated when the described type of communication has been or was first obtained, a particular description of facts establishing probable cause to believe that additional communications of the same type will or would occur thereafter;

(5) a full and complete statement of the facts concerning all previous applications, known to the individual authorizing or making the application, made to any judge for authorization to intercept, or for approval of interceptions of, wire or oral communications involving any of the same persons, facilities, or places specified in the application, and the action taken by the judge on each such application; and

(6) where the application is for the extension of an order, a statement setting forth the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain results.

(b) The judge may require the applicant to furnish additional testimony or documentary evidence in support of the application.

(c) Upon application the judge may enter an ex parte order, as requested or as modified, authorizing or approving interception of wire or oral communications within the District of Columbia, if the judge determines on the basis of the facts submitted by the applicant that—

(1) there is or was probable cause for belief that the person whose communication is to be or was interpreted is or was committing, has committed, or is about to commit a particular offense enumerated in section 23–546;

(2) there is or was probable cause for belief that particular communications concerning that offense will or would be obtained through the interception;

(3) normal investigative procedures have or would have been tried and have or had failed or reasonably appear or appeared to be unlikely to succeed if tried or to be too dangerous; and

(4) there is or was probable cause for belief that the facilities from which, or the place where, the wire or oral communications are to be or were intercepted were used, are being used, or are about to be used, in connection with the commission of the offense, or are or were leased to, listed in the name of, or commonly used by the person referred to in paragraph (1).

(d) If the facilities from which a wire communication is to be or was intercepted are or were

being used by, are or were about to be used by, or are or were leased to, listed in the name of, or commonly used by, a licensed physician, a licensed attorney, or practicing clergyman, or if the place where an oral communication is to be or was intercepted is or was a place used primarily for habitation by a husband and wife or primarily by a licensed physician, licensed attorney, or practicing clergyman for his own professional purposes, no order authorizing or approving such interception may be issued unless the court, in addition to the matters provided in subsection (c) of this section, determines that—

(1) such facilities or place are or were being used or are or were about to be used in connection with conspiratorial activities characteristic of organized crime; and

(2) such interceptions will be so conducted as to minimize or eliminate the number of interceptions of privileged wire or oral communications between licensed physicians and patients, licensed attorneys and clients, practicing clergymen and confidants, and husbands and wives.

No otherwise privileged wire or oral communication intercepted in accordance with, or in violation of, the provisions of this subchapter shall lose its privileged character.

(e) Each order authorizing or approving the interception of any wire or oral communication shall specify—

(1) the identity of the person, if known, or otherwise a particular description of the person, if known, whose communications are to be or were intercepted;

(2) the nature and location of the communication facilities as to which, or the place where, authority to intercept or any approval of interception is or was granted;

(3) a particular description of the type of communication sought to be or which was intercepted, and a statement of the particular offense to which it relates;

(4) the identity of the agency authorized to intercept or whose interception is approved, and of the person authorizing the application; and

(5) the period of time during or for which the interception is authorized or approved, including a statement as to whether or not the interception shall automatically terminate when the described communication has been first obtained.

(f) An order authorizing the interception of a wire or oral communication shall, upon request of the applicant, direct that a communication common carrier, landlord, custodian, or other person shall furnish the applicant forthwith all information, facilities, or technical assistance necessary to accomplish the interception unobstrusively and with a minimum of interference with the services that such carrier, landlord, custodian, or person is according the person whose communications are to be intercepted. Any communication common carrier, landlord, custodian, or other person furnishing such facilities or technical assistance shall be compensated therefore by the applicant at the prevailing rates.

(g) No order entered under this section may authorize or approve the interception of any wire or oral communication for any period longer than is necessary to achieve the objective of the authorization, nor in any event longer than thirty days. Extensions of an order may be granted, but only upon application for an extension made in accordance with subsection (a) of this section and the court making the findings required by subsection (c) of this section. The period of extension shall be no longer than the authorizing judge deems necessary to achieve the purposes for which it was granted and in no event for longer than thirty days. Every order and extension thereof shall contain a provision that the authorization to intercept shall be executed as soon as practicable, shall be conducted in such a way as to minimize or eliminate the interception of communications not otherwise subject to interception under this subchapter, and must terminate upon attainment of the auhorized objective, or in any event in thirty days.

(h) Whenever an order authorizing interception is entered pursuant to this subchapter, the order may require reports to be made to the judge who issued the order showing what progress has been made toward achievement of the authorized objective and the need for continued interception. Reports shall be made at such intervals as the judge may require. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 621.)

EFFECTIVE DATE

See note preceding section 23–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–551, 23–555, 23–556.

§ 23–548. Additional procedure for approval of interception of wire or oral communications

(a) Notwithstanding any other provision of this subchapter, any investigative or law enforcement officer, specially designated by the United States attorney for the District of Columbia, who reasonably determines that—

(1) an emergency situation exists with respect to conspiratorial activities characteristic of organized crime that requires a wire or oral communication to be intercepted before an order authorizing the interception can with due diligence be obtained, and

(2) there are grounds upon which an order could be entered under this subchapter to authorize interception,

may intercept the wire or oral communication if an application for an order approving the interception is initiated in accordance with this section within twelve hours and is completed within seventy-two hours after the interception has occurred, or begins to occur. In the absence of an order, the interception shall immediately terminate when the communication sought is obtained or when the application for the order is denied, whichever is earlier. In the event the application for approval is denied, or in any other case where the interception is terminated without an order having been issued, the contents of any wire or oral communication intercepted shall be treated as having been obtained in violation of this subchapter, and an inventory shall be served as provided for in section 23–550 on the person named in the application.

(b) When an investigative or law enforcement officer, while engaged in intercepting wire or oral communications in the manner authorized by this subchapter, intercepts wire or oral communications relating either to offenses other than those specified in the order of authorization or to offenses other than those offenses for which interception was made pursuant to subsection (a) of this section, he shall make an application to a judge as soon as practicable for approval for disclosure and use, in accordance with section 23–553, of the information intercepted. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 623.)

EFFECTIVE DATE

See note preceding section 23.101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–555, 23–556.

§ 23–549. Maintenance and custody of records

(a) The contents of any wire or oral communication intercepted by any means authorized by this subchapter shall, if possible, be recorded on tape or wire or other comparable device. The recording of the contents of any wire or oral communication under this subchapter shall be done in such way as will protect the recording from editing or other alterations. Immediately upon the expiration of the period of the order, or extensions thereof, the recordings shall be made available to the judge issuing the order and sealed under his directions. Custody of the recordings shall be wherever the judge orders. They shall not be destroyed except upon an order of the issuing or denying judge and in any event shall be kept for ten years. Duplicate recordings may be made for use or disclosure pursuant to the provisions of subsection (a) of section 23–553, for investigations. The presence of the seal provided for by this subsection, or a satisfactory explanation for the absence thereof, shall be a prerequisite for the use or disclosure of the contents of any wire or oral communication or evidence derived therefrom under subsection (b) of section 23–553.

(b) Applications made and orders granted under this subchapter shall be sealed by the judge. Custody of the applications and orders shall be wherever the judge directs. The applications and orders shall be disclosed only upon a showing of good cause before a judge of competent jurisdiction and shall not be destroyed except on order of the issuing or denying judge, and in any event shall be kept for ten years.

(c) Any violation of the provisions of this subsection may be punished as contempt of court. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 624.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–551, 23–556.

§ 23–550. Inventory

(a) Within a reasonable time but not later than ninety days after the filing of an application for an order of approval under section 23–548 which is denied, or the termination of the period of any order or extensions thereof, the issuing or denying judge shall cause to be served, on the persons named in the order or the application, and such other parties to intercepted communications as the judge may determine, in his discretion, are necessary in the interest of justice, an inventory which shall include notice of—

(1) the fact of the entry of the order or the application for an order of approval which was denied;

(2) the date of the entry of the order or the denial of the application for an order of approval;

(3) The period of authorized, approved, or disapproved interception; and

(4) whether during the period wire or oral communications were intercepted.

The judge, upon the filing of a motion, may in his discretion make available to the person or his counsel for inspection such portions of the intercepted communications, applications, and orders as the judge determines to be in the interest of justice. On an ex parte showing of good cause to a judge, the serving of the inventory required by this subsection may be postponed. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 624.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–548, 23–551, 23–556.

§ 23–551. Procedure for disclosure and suppression of intercepted wire or oral communications

(a) The contents of any intercepted wire or oral communication or evidence derived therefrom shall not be received in evidence or otherwise disclosed in any trial, hearing, or other proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States or the District of Columbia unless not less than ten days before the trial, hearing, or proceeding—

(1) the inventory as provided in section 23–550 has been served; and

(2) the parties to the action have been served with a copy of the order and accompanying application under which the interception was authorized or approved.

This ten-day period may be waived by court order where a court finds that it was not possible to furnish the party with the above information ten days before the trial, hearing, or proceeding and that the party will not be prejudiced by the delay in receiving the information.

(b) Any aggrieved person in any trial, hearing, or proceeding in or before any court, department, officer, agency, regulatory body, or other authority of the United States or the District of Columbia, may move to suppress the contents of any intercepted wire or oral communication, or evidence derived therefrom, on the grounds that—

(1) the communication was unlawfully intercepted;

(2) the order of authorization or approval under which it was intercepted is insufficient on its face;

(3) the interception was not made in conformity with the order of authorization or approval;

(4) service was not made as provided in section 23–547; or

(5) the seal prescribed by section 23–549(a) is not present and there is no satisfactory explanation for its absence.

The motion shall be made before the trial, hearing or proceeding unless there was no opportunity to make the motion or the person was not aware of the

grounds of the motion. If the motion is granted, the contents of the intercepted wire or oral communication, or evidence derived therefrom, shall be treated as having been obtained in violation of this subchapter and shall not be received in evidence in the trial, hearing, or proceeding. The judge, upon the filing of the motion by the aggrieved person, may in his discretion make available to the aggrieved person or his counsel for inspection such portions of the intercepted communication or evidence derived therefrom as the judge determines to be in the interests of justice. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 624; Dec. 7, 1970, Pub. L. 91–530, § 2(c), 84 Stat. 1390.)

AMENDMENT

1970—Section 2(c) of act Dec. 7, 1970, Pub. L. 91–530, amended the section (1) by striking out "suppression" in the heading and inserting in place thereof "suppression" and (2) by striking out "subsection (i) of this section" in subsec. (b)(5) and inserting in lieu thereof "section 23–549(a)".

EFFECTIVE DATE OF 1970 AMENDMENT

Section 2(d) of act Dec. 7, 1970, Pub. L. 91–530, provided: The amendments made by subsections (a) and (c) of this section [subsec. (c) amended § 23–551] shall take effect on the first day of the seventh calendar month which begins after the date of the enactment of the Act of July 29, 1970 (84 Stat. 473).

EFFECTIVE DATE OF SECTION

See note preceding section 23–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–552, 23–556.

§ 23–552. Government appeals.

In addition to any other right to appeal, the United States or the District of Columbia, as the case may be, shall have the right to appeal from an order granting a motion to suppress made under section 23–551 or from the denial of an application for an order of approval, if the United States or the District of Columbia, as the case may be, shall certify to the judge or other official granting such motion or denying the application that the appeal is not taken for purposes of delay. Appeal shall be taken within thirty days after the date the order was entered and shall be diligently prosecuted. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 625.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–556.

§ 23–553. Authorization for disclosure and use of intercepted wire or oral communications

(a) Any investigative or law enforcement officer who, by any authorized means and in conformity with this subchapter, has obtained knowledge of the contents of any wire or oral communication, or evidence derived therefrom, may disclose or use such contents or evidence to the extent that such disclosure or use is appropriate to the proper performance of his official duties.

(b) Any person who, by any authorized means and in conformity with this subchapter, has obtained knowledge of the contents of any wire or oral communication intercepted in accordance with this subchapter, or other lawful authority, or evidence derived therefrom, may disclose the contents of such communication or evidence while giving testimony under oath or affirmation in any criminal trial, hearing, or proceeding before any grand jury or court.

(c) The contents of any wire or oral communication intercepted in conformity with this subchapter, or evidence derived therefrom, may otherwise be disclosed or used only by court order upon a showing of good cause. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 625.)

EFFECTIVE DATE

See note preceding section 23–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–548, 23–549, 23–556.

§ 23–554. Authorization for recovery of civil damages

(a) Any person whose wire or oral communication is intercepted, disclosed, or used in violation of this subchapter shall—

(1) have a civil cause of action against any person who intercepts, discloses, or uses, or procures any other person to intercept, disclose, or use, such communications; and

(2) be entitled to recover from any such person—

(A) actual damages, but not less than liquidated damages computed at the rate of $100 a day for each day of violation, or $1,000 whichever is higher;

(B) punitive damages; and

(C) a reasonable attorney's fee and other litigation costs reasonably incurred.

(b) Good faith reliance on a court order or legislative authorization shall constitute a complete defense to an action brought under this section or any other law.

(c) As used in this section, the term "person" includes the District of Columbia. The District of Columbia shall not assert any governmental immunity to avoid liability under this section. Judgment against the District of Columbia shall not constitute a bar to action against any other person. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 626.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–556.

§ 23–555. Reports concerning intercepted wire or oral communications

(a) Within thirty days after the expiration of an order or an extension entered under section 23–547 or 23–548 or the denial of an order of approval, the issuing or denying court shall report to the chief judge of the District of Columbia of Appeals—

(1) that an order or extension was applied for;

(2) the kind of order or extension applied for;

(3) if the order or extension was granted as applied for, was modified, or was denied;

(4) the period of the interceptions authorized by the order, and the number and duration of any extensions of the order;

(5) the offense specified in the order or application, or extension of an order;

(6) the identity of the applying investigative or law enforcement officer, the agency making the application, and the person authorizing the application; and

(7) the character and location of the facilities from which and the place where communications were (and were to be) intercepted.

(b) In January of each year the United States Attorney for the District of Columbia shall report to the Congress of the United States and the chief judge of the District of Columbia Court of Appeals—

(1) the information required by paragraphs (1) through (7) of subsection (a) of this section with respect to each application for an order or extension made during the immediately preceding calendar year;

(2) a general description of the interceptions made under such order or extension, including—

(A) the approximate character and frequency of incriminating communications intercepted;

(B) the approximate character and frequency of other communications intercepted;

(C) the approximate number of persons whose communications were intercepted; and

(D) the approximate character, amount, and cost of the manpower and other resources used in the interceptions;

(3) the number of arrests resulting from interceptions made under such order or extension;

(4) the offenses for which the arrests were made;

(5) the number of trials resulting from such interceptions;

(6) the number of motions to suppress made with respect to such interceptions;

(7) the number of motions to suppress granted or denied;

(8) the number of convictions resulting from such interceptions;

(9) the offenses for which the convictions were obtained;

(10) a general assessment of the importance of the interceptions; and

(11) for purposes of comparison, the information required by paragraphs (2) through (10) of this subsection with respect to orders and extensions obtained in other preceding calendar years.

(c) Reports made pursuant to the section shall be made in accordance with regulations prescribed by the Director of the Administration Office of the United States Courts under section 2519(3) of title 18, United States Code. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 626.)

EFFECTIVE DATE

See note preceding section 23–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–556.

§ 23–556. Relation to Federal law on wire interception and interception of oral communications

(a) Sections 23–542, 23–543, 23–545, 23–553, 23–554, and 23–555 of this subchapter shall be construed to supplement, and not to supersede or otherwise limit, the provisions of chapter 119 of title 18, United States Code (relating to wire interception and interception of oral communications).

(b) Sections 23–546, 23–547, 23–548, 23–549, 23–550, 23–551, and 23–552 of this subchapter shall be construed not to supersede or otherwise limit the provisions of chapter 119 of title 18, United States Code, except in cases of irreconcilable conflict. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 627.)

REFERENCE IN TEXT

Section 23–545 (Immunity of witnesses), referred to in text, was repealed by act Oct. 15, 1970, Pub. L. 91–452, title II, § 252, 84 Stat. 931. For general immunity statute enacted by Pub. L. 91–452, see 18 U.S.C. 6002.

SUBCHAPTER IV.—ARREST WARRANT AND SUMMONS

§ 23–561. Issuance, form, and contents

(a)(1) A judicial officer may issue a warrant for the arrest of any person upon a sworn complaint which states facts constituting an offense over which the judicial officer has jurisdicition for trial or preliminary examination, and establishing probable cause to believe that the person committed the offense. More than one warrant may issue on the same complaint.

(2) Upon request of the prosecutor, a summons shall issue instead of an arrest warrant. More than one summons may issue on the same complaint. If a person fails to appear in response to a summons, a warrant shall issue for his arrest.

(b)(1) An arrest warrant shall be signed by the judicial officer and shall state or contain the name of the issuing court, the date of issuance of the warrant, a description of the offense charged, and the name of the person to be arrested or, if his name is unknown, any name or description by which he can be identified with reasonable certainty. It shall command that the person be arrested and brought before the issuing court or officer. If the complaint establishes probable cause to believe that one of the conditions set out in subparagraphs (A) through (D) of section 23–591(c)(2) is likely to exist at the time and place at which such warrant is to be executed, the warrant may contain an authorization that it be executed as provided in section 23–591.

(2) A summons shall be in the same form as an arrest warrant except that it shall summon the person named to appear before the issuing court or officer at a stated time and place.

(c) An arrest warrant may be directed to a specific law enforcement officer or to any classifications of officers of the Metropolitan Police of the District of Columbia or other agency authorized to make arrests or execute process.

(d) Each complaint shall be made in writing upon oath or affirmation. Except for good cause shown, no warrant shall be issued unless the complaint has been approved by an appropriate prosecutor. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 627.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–562. Execution and return

(a)(1) A warrant issued pursuant to this subchapter shall be executed by the arrest of the person named. The officer need not have the warrant in his possession at the time of the arrest, but upon request he shall show the warrant to the person as soon as possible. If the officer does not have the warrant in his possession at the time of the arrest, he shall inform the person of the offense charged and of the fact that a warrant has been issued.

(2) A summons shall be served upon a person by delivering a copy to him personally, by leaving it at his dwelling house or usual place of abode with some

person of suitable age and discretion then residing therein, or by mailing it to the person's last known address.

(b) (1) The officer executing a warrant shall make return thereof to the judicial officer before whom the person is brought for preliminary examination. At the request of the appropriate prosecutor, any unexecuted and unexpired warrant shall be returned to the issuing court or judicial officer and shall be canceled.

(2) On or before the return day the person to whom a summons was delivered for service shall make return thereof to the court or officer before whom the summons is returnable.

(3) At the request of the appropriate prosecutor made at any time while the complaint is pending, a warrant returned unexecuted and not canceled or expired or a summons returned unserved or a duplicate thereof may be delivered by the judicial officer to the marshal or other authorized person for execution or service.

(c) (1) A law enforcement officer within the District of Columbia making an arrest under a warrant issued pursuant to this subchapter, making an arrest without a warrant, or receiving a person arrested by a special policeman or other person pursuant to section 23–582, shall take the arrested person without unnecessary delay before the court or other judicial officer empowered to commit persons charged with the offense for which the arrest was made. This subsection, however, shall not be construed to conflict with or otherwise supersede section 3501 of title 18, United States Code. When a person arrested without a warrant is brought before a judicial officer, a complaint or information shall be filed forthwith.

(2) Before taking an arrested person to a judicial officer, a law enforcement officer may perform any recording, fingerprinting, photographing, or other preliminary police duties required in the particular case, and if such duties are performed with reasonable promptness, the period of time required therefor shall not constitute a delay within the meaning of this section. (July 29, 1970, Pub. L. 91–358, § 210 (a), title II, 84 Stat. 628.)

§ 23–563. Territorial and other limits

(a) A warrant or summons for an offense punishable by imprisonment for more than one year issued by the Superior Court of the District of Columbia may be served at any place within the jurisdiction of the United States.

(b) A warrant or summons issued by the Superior Court of the District of Columbia for an offense punishable by imprisonment for not more than one year, or by a fine only, or by such imprisonment and a fine, may be served in any place in the District of Columbia but may not be executed more than one year after the date of issuance.

(c) A person arrested outside the District of Columbia on a warrant issued by the Superior Court of the District of Columbia shall be taken before a judge, commissioner, or magistrate, and held to answer in the Superior Court pursuant to the Federal Rules of Criminal Procedure as if the warrant had been issued by the United States District Court for the District of Columbia.

(d) When an application alleges that (1) an act which would constitute a felony if committed by an adult has been committed by a child, (2) the child may not with due diligence be found within the District of Columbia, and (3) if the District of Columbia is a party to article XVII of the Interstate Compact on Juveniles, the child is not known to be in a jurisdiction which is a party to such article, a juvenile officer may secure a warrant for the arrest of the child as if he were an adult. When the child is brought before the issuing court or officer pursuant to the warrant he shall be ordered transferred to the Family Division of the Superior Court pursuant to section 16–2302. If the child is found in a jurisdiction which is a party to such article and if the District of Columbia is a party to such article, he shall be returned as provided in that article and the warrant shall be null and void. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 628.)

REFERENCE IN TEXT

The Interstate Compact on Juveniles, referred to in subsec. (d), is set out as a note to § 32–1102.

EFFECTIVE DATE

See note preceding section 23–101.

SUBCHAPTER V.—ARREST WITHOUT WARRANT

§ 23–581. Arrests without warrant by law enforcement officers

(a) (1) A law enforcement officer may arrest, without a warrant having previously been issued therefor—

(A) a person whom he has probable cause to believe has committed or is committing a felony;

(B) a person whom he has probable cause to believe has committed or is committing an offense in his presence;

(C) a person whom he has probable cause to believe has commited or is about to commit any offense listed in paragraph (2) and, unless immediately arrested, may not be apprehended, may cause injury to others, or may tamper with, dispose of, or destroy evidence.

(2) The offenses referred to in subparagraph (C) of paragraph (1) are the following:

(A) The following offenses specified in the Act entitled "An Act to establish a code of law for the District of Columbia", approved March 3, 1901, and listed in the following table:

Offense:	Specified in—
Assault	section 806 (D.C. Code, sec. 22–504).
Petit larceny	section 827 (D.C. Code, sec. 22–2202).
Receiving stolen goods	section 829 (D.C. Code, sec. 22–2205).
Unlawful entry	section 824 (D.C. Code, sec. 22–3102).

(B) Attempts to commit the following offenses specified in such Act and listed in the following table:

Offense:	Specified in—
Burglary	section 823 (D.C. Code, sec. 22–1801).
Grand larceny	section 826 (D.C. Code, sec. 22–2201).
Unauthorized use of vehicles.	section 826b (D.C. Code, sec. 22–2204).

(b) A law enforcement officer may, even if his jurisdiction does not extend beyond the District of Columbia, continue beyond the District, if necessary, a pursuit commenced within the District of a person who has committed an offense or whom he has probable cause to believe has committed or is committing a felony, and may arrest that person in any State the laws of which contain provisions equivalent to those of section 23–901. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 629.)

EFFECTIVE DATE

See note preceding section 23–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–524, 23–582.

1970 AMENDMENT OF FORMER SECTION 23–306

Section 2 of Act Oct. 22, 1970, Pub. L. 91–497, 84 Stat. 1093, provided:

Subsection (b) of section 207 of the Act entitled "An Act to provide for the more effective prevention, detection, and punishment of crime in the District of Columbia", approved June 29, 1953 (D.C. Code, 23–306(b)) is amended—

(1) by striking out "section 863(a)" and inserting in lieu thereof "sections 863(a) and 842 (b) and (c)"; and

(2) by inserting immediately before the period at the end the following: "(failure to pay for lodging or food; D.C. Code, sec. 22–1301)".

As so amended, former section 23–306 read:

§ 23–306. Arrests without warrant for unlawful possession of implements of crime—Burglar tools—Weapons—Lottery tickets—Stolen property.

(a) Arrests without a warrant, and searches of the person and seizures pursuant thereto, may be made for violation of any section listed in subsection (b), by police officers, as in the case of a felony, upon probable cause that the person arrested is violating the section involved at the time of arrest.

(b) Subsection (a) shall apply with respect to section 22–3601 (possession of implements of crime), sections 22–3203, 22–3204, and 22–3214, providing for the control of dangerous weapons in the District, section 22–1502 (possession of lottery tickets), and section 22–1301(b) and (c) (failure to pay for food and lodging).

(c) Arrests without a warrant, and searches of the person and seizures pursuant thereto, may be made for violation of section 22–2202 (petit larceny), by police officers, as in the case of a felony, upon probable cause that the person arrested has in his possession at the time of the arrest, property taken in violation of that section.

(d) No evidence discovered in the course of any arrest, search, or seizure authorized by this section shall be admissible in any criminal proceeding against the person arrested unless at the time of such arrest he was violating one of the sections referred to in subsection (b) or had in his possession property taken in violation of the section referred to in subsection (c).

[Title 23 was enacted into law by section 210(a) of Pub. L. 91–358, eff. Feb. 1, 1971. As of that date, section 207 of the Act of June 29, 1953 (former section 23–306) was repealed by section 210(b)(10) of Pub. L. 91–358.]

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 23–306 and other sections of title 23 in 1967 edition]

Cause for arrest

Where a police officer had a conversation with the victim of an assault and petit larceny and proceeded in patrol car in search of the assailants, and the stolen articles were in plain view of officer in defendant's hand and at his feet in the gutter, an arrest was authorized when the officer saw the stolen articles, *R. L. Thompkins* v. *United States* (D.C. App. 1969, 251 A. 2d 636).

Where in making an initial stop of the defendant, the officer was engaged in routine on-the-street investigation in nearby area of a crime minutes after it occurred in an early hour of the morning in his effort to find perpetrator while the trail was still warm, and under these circumstances the initial stop of defendant was neither an arrest nor an arbitrary detention, but arrest occurred after officer saw the articles which fit description of stolen property, which gave sufficient cause to arrest, and seizure was not invalid. *Id.*

Evidence—Sufficiency

Officer's independent testimony with respect to defendant's possession of gun to which no objection was made was sufficient to support defendant's conviction for carrying pistol without a license. *L. G. Lee* v. *United States* (D.C. App. 1968, 242 A. 2d 212).

Probable cause

Arrests without warrant and searches and seizures pursuant thereto may be made for a misdemeanor upon probable cause that the person arrested has in his possession at the time of arrest property taken in violation of section 22–2202. *F. C. Clemm, Jr.* v. *United States* (D.C. App. 1970, 260 A. 2d 687).

Police officer, who was told by taxicab driver who pointed toward three men walking on street that driver had seen person up the street tuck gun under his belt, had probable cause to stop and search the only three men who were present on street even though taxicab driver did not say which of the men he had seen with gun, and gun found on person of defendant in such search was admissible. *H. L. Gaskins* v. *United States* (D.C. App. 1970, 262 A. 2d 810).

Viewing by officers of the inside of the automobile in which defendant was sitting on parking lot of restaurant at 4:30 a.m. did not constitute a search and was merely a customary check of premises and when they saw two other persons lying down in automobile and observed what appeared to be a .38 caliber cartridge on the floor they had probable cause to believe that there was a dangerous weapon in the automobile and were justified in arresting defendant, and revolver which was in plain sight when officers opened door to make arrest was admissible. *J. E. Lucas* v. *United States* (D.C. App. 1969, 256 A. 2d 574).

Standard to be applied in determining probable cause for arrest is that of a reasonable, cautious and prudent police officer and must be judged in the light of his experience and training, and bases for finding of probable cause must be those factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. *B. Wright, Jr.* v. *United States* (D.C. App. 1968, 242 A. 2d 833).

Arrest without a warrant for carrying a dangerous or deadly weapon may be made on probable cause. *L. G. Lee* v. *United States* (D.C. App. 1968, 242 A. 2d 212).

Police officer is not privileged to ignore facts which would give him reasonable cause to believe that a person is carrying a dangerous or deadly weapon. *Id.*

Where officer at early hour in morning saw defendant and another man talking to manager of motel and when officer approached they hurriedly moved away from door and officer received inconsistent answers to his inquiries to the men and officer noted that defendant was carrying bag containing large heavy object and when officer asked if there was gun in the bag, defendant started backing off and did not answer, officer had probable cause to arrest defendant for carrying pistol and to seize the gun. *Id.*

Evidence established that police officers saw gun handle sticking out of defendant's pocket and had probable cause to believe that defendant was carrying dangerous weapon in violation of law. *United States* v. *P. Jenkins, Jr.* (1967, 276 F. Supp. 958).

Police officers may arrest without warrant when there is probable cause to believe that felony has been committed and that arrested person committed it, or when misdemeanor has been committed in their presence or view, and may also arrest for certain misdemeanors, including petit larceny, using probable cause standard. *E. C. Singleton* v. *United States* (D.C. App. 1967, 225 A. 2d 315).

Sales clerk may report shoplifting incident to special policeman who can then arrest suspect on probable cause. *Id.*

Probable cause for arrest

A police officer in the District of Columbia has the power to make a warrantless arrest of a citizen when he has a probable cause to believe that the citizen has committed felony or certain misdemeanors designated by statute, and the classic test for probable cause is whether the officer had knowledge of facts and circumstances which would warrant a prudent man in believing that an offense had been committed. *A. B. Clarke* v. *United States* (D.C. App. 1969, 256 A. 2d 782).

Search and seizure

In District of Columbia principle that police may make arrest and incidental search in public place without warrant upon probable cause is applicable to suspected violations of statute prohibiting carrying concealed weapons. *United States* v. *A. Huff et ano.* (1967, 279 F. Supp. 143).

Where defendants were lawfully stopped originally pursuant to police officer's power to check for traffic violations and when officer asked driver to check glove compartment for registration card, officer thought he saw a revolver in the compartment, sufficient information existed to warrant officer in believing that an offense had been committed and there was probable cause for search without warrant, and that did not evaporate when no gun was found in glove compartment. *Id.*

Once cause existed to search automobile for prohibited weapon, likely places within automobile could be inspected. *Id.*

Special policeman as "police officer"

Special policeman, while on duty and in his prescribed area of authority, is a "police officer" within arrest statute, and may arrest when he has probable cause to believe that arrested person has perpetrated crime of petit larceny on merchandise of his employer. *E. C. Singleton* v. *United States* (D.C. App. 1967, 225 A. 2d 315).

Special policeman, who observed defendant's suspicious actions within department store and followed him to another store where defendant produced merchandise from underneath his coat, was authorized to make arrest on basis of probable cause for belief that defendant had committed petit larceny in department store. *Id.*

Validity of arrest

A defendants' arrest on a charge of petit larceny was lawful depending upon whether arresting officer had probable cause to believe that they had in their possession "fruits of the crime." *S. Smith and W. Jeffries* v. *United States* (D.C. App. 1968, 247 A. 2d 293).

§ 23–582. Arrests without warrant by other persons

(a) A special policeman shall have the same powers as a law enforcement officer to arrest without warrant for offenses committed within premises to which his jurisdiction extends, and may arrest outside the premises on fresh pursuit for offenses committed on the premises.

(b) A private person may arrest another—

(1) whom he has probable cause to believe is committing in his presence—

(A) a felony, or

(B) an offense enumerated in section 23–581 (a)(2); or

(2) in aid of a law enforcement officer or special policeman, or other person authorized by law to make an arrest.

(c) Any person making an arrest pursuant to this section shall deliver the person arrested to a law enforcement officer without unreasonable delay. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 630.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–562.

SUBCHAPTER VI.—AUTHORITY TO BREAK AND ENTER UNDER CERTAIN CONDITIONS

§ 23–591. Authority to break and enter under certain conditions

(a) Any officer authorized by law to make arrests, or to execute search warrants, or any person aiding such an officer, may break and enter any premises, any outer or inner door or window of a dwelling house or other building, or any part thereof, any vehicle, or anything within such dwelling house, building, or vehicle, or otherwise enter to execute search or arrest warrants, to make an arrest where authorized by law without a warrant, or where necessary to liberate himself or a person aiding him in the execution of such warrant or in making such arrest.

(b) Breaking and entry shall not be made until after such officer or person makes an announcement of his identity and purpose and the officer reasonably believes that admittance to the dwelling house or other building or vehicle is being denied or unreasonably delayed.

(c) An announcement of identity and purpose shall not be required prior to such breaking and entry—

(1) if the warrant expressly authorizes breaking and entry without such a prior announcement, or

(2) if circumstances known to such officer or person at the time of breaking and entry, but, in the case of the execution of a warrant, unknown to the applicant when applying for such warrant, give him probable cause to believe that—

(A) such notice is likely to result in the evidence subject to seizure being easily and quickly destroyed or disposed of,

(B) such notice is likely to endanger the life or safety of the officer or another person,

(C) such notice is likely to enable the party to be arrested to escape, or

(D) such notice would be a useless gesture.

(d) Whoever, after notice is given under subsection (b) or after entry where such notice is unnecessary under subsection (c), destroys, conceals, disposes of, or attempts to destroy, conceal, or dispose of, or otherwise prevents or attempts to prevent the seizure of, evidence subject to seizure shall be fined not more than $5,000 or imprisoned for not more than 5 years, or both.

(e) As used in this section and in subchapters II and IV, the terms "break and enter" and "breaking and entering" include any use of physical force or violence or other unauthorized entry but do not include entry obtained by trick or strategem. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 630.)

EFFECTIVE DATE

See note preceding section 23–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–521, 23–522, 23–524, 23–561.

Chapter 7.—EXTRADITION AND FUGITIVES FROM JUSTICE

Sec.

23–701. Warrants for the arrest of fugitives from justice.
23–702. Procedure on arrest of fugitives.
23–703. Failure to appear.

Sec.
23–704. Extradition.
23–705. Removal proceedings and returns to foreign countries not affected.
23–706. Confinement.
23–707. Definitions.

§ 23–701. Warrants for the arrest of fugitives from justice

Whenever any person who is (1) within the District of Columbia, (2) charged with any offense committed in any State, and (3) liable by the Constitution and laws of the United States to be delivered over upon the demand of the Governor of that State, any judge of the Superior Court may, upon complaint on oath or affirmation of any credible witness, setting forth the offense, that the person is a fugitive from justice, and such other matters as are necessary to bring the case within the provisions of law, issue a warrant to bring the person so charged before the Superior Court, to answer the complaint. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 631.)

EFFECTIVE DATE

See note preceding section 23–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–702.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 23–403 and other sections in title 23 in 1967 edition]

Original jurisdiction

The Chief Judge of District Court in District of Columbia exercises an executive function by presiding at extradition hearings and General Sessions Court exercises a judicial function by issuing detention warrant and setting bail, thus there is no court having original jurisdiction over offense within appeal provisions of Bail Reform Act, and appeal from an order of detention is, therefore, properly directed to District of Columbia Court of Appeals. *J. T. Hoffman* v. *United States* (1968, 403 F. 2d 927, 131 U.S. App. D.C. 201).

§ 23–702. Procedure on arrest of fugitives

(a) Any person arrested upon a warrant issued pursuant to section 23–701, or arrested within the District of Columbia as a fugitive from justice without a warrant having been issued, shall be taken before the Criminal Division of the Superior Court for preliminary examination on a complaint charging him as a fugitive.

(b) If, upon the examination of the person charged, it shall appear to the court that there is reasonable cause to believe that the complaint is true and that the person may be lawfully demanded of the chief judge, the person shall be detained or released according to law, in like manner as if the offense had been committed in the District of Columbia, to appear before the court at a future date, allowing thirty days to obtain a requisition from the Governor of the State from which the person is a fugitive. The complaint of fugitivity from another jurisdiction shall create a presumption that the person is unlikely to appear if released, which may be overcome only by clear and convincing proof.

(c) If the person so released or detained shall appear before the court upon the day ordered, he shall be discharged, unless he shall be demanded by requisition, pursuant to subsection (g) of this section or section 23–704, or unless the court shall find cause to detain or to release him as provided by subsection (b) until a later day; but regardless of whether the person shall be detained or released as provided in subsection (b) or discharged, his delivery to any person authorized by the warrant of the Governor shall be a discharge of any bond or obligation.

(d) The Chief of Police of the Metropolitan Police Department shall give notice to the police official or sheriff of the city or county from which the person is a fugitive that the person is so held in the District of Columbia.

(e) A person detained as provided by this section shall not be detained in jail longer than to allow a reasonable time for the person receiving the notice required by subsection (d) to apply for and obtain a proper requisition for the person detained according to the circumstances of the case and the distance of the place where the offense is alleged to have been committed.

(f) (1) At any time prior to the filing of a requisition, a person arrested pursuant to this section may in open court waive further proceedings pursuant to this chapter.

(2) Following waiver, a judge of the Superior Court may, in his discretion, if the United States attorney consents, release the person upon such conditions as the judge shall deem necessary to insure his appearance before the proper official in the State from which he is a fugitive, and shall otherwise order his return to the jurisdiction of that State in the custody of a proper official.

(3) Following waiver, a person not released pursuant to paragraph (2) of this subsection shall be ordered to return to the jurisdiction from which he is a fugitive in the custody of a proper official, and may be detained to await return.

(4) A person detained pursuant to paragraph (3) for more than three days (not including Saturdays, Sundays, and holidays) shall be returned to the court and shall thereupon be released pursuant to paragraph (2), unless the court shall find good reason to extend his detention for an additional three days to obtain the attendance of a proper official of the demanding jurisdiction.

(g) If a person has not waived further proceedings pursuant to subsection (f), and a requisition from the Governor of the jurisdiction from which the person is a fugitive is presented to the court, the court shall order the requistion to be filed and referred to the chief judge for extradition proceedings pursuant to section 23–704, and shall order the person committeed pending those proceedings. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 631).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–703, 23–902.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 23–404 and other sections in title 23, in 1967 edition]

Original jurisdiction

The Chief Judge of District Court in District of Columbia exercises an executive function by presiding at extradition hearings and General Sessions Court exercises a judicial function by issuing detention warrant and setting bail, thus there is no court having original jurisdiction over offense within appeal provisions of Bail Reform Act, and appeal from an order of detention is, therefore, properly directed to District of Columbia Court of Appeals. *J. T. Hoffman* v. *United States* (1968, 403 F. 2d 927, 131 U.S. App. D.C. 201).

§ 23–703. Failure to appear

Any person released pursuant to section 23–702 who fails to appear as required shall be punished by a fine not exceeding $5,000 or imprisonment for not more than five years, or both. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 632.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–704. Extradition

(a) In all cases where the laws of the United States provide that fugitives from justice shall be delivered up, the chief judge of the Superior Court shall cause to be apprehended and delivered up fugitives from justice who shall be found within the District of Columbia, in the same manner and under the same regulations as the executive authority of a State is required to do by the provisions of chapter 209 of title 18, United States Code, and all executive and judicial officers are required to obey the lawful precepts or other process issued for that purpose, and to aid and assist in that delivery.

(b) The chief judge of the Superior Court may also surrender, on demand of the Governor of any State, any person in the District of Columbia charged in that State in the manner provided in subsection (a) of this section with committing an act in the District of Columbia, or in another State, intentionally resulting in a crime in the State whose executive authority is making the demand, even though the accused was not in that State at the time of the commission of the crime, and has not fled therefrom.

(c) No person apprehended in accordance with the provisions of subsections (a) and (b) of this section shall be delivered over to the agent whom the executive authority demanding him shall have appointed to receive him unless he shall first be taken before the chief judge of the Superior Court of the District of Columbia who shall inform him of the demand made for his surrender, and of the crime with which he is charged, and that he has the right to demand and procure legal counsel.

(d) If the person or his counsel shall state that he desires to test the legality of the person's arrest, the chief judge shall hold a hearing to determine whether the person shall be delivered over as demanded. At the hearing, the person shall have the same rights to challenge his detention and extradition as if the hearing were upon a writ of habeas corpus.

(e) If the chief judge shall order the person delivered over, he may appeal, within twenty-four hours, from that order to the District of Columbia Court of Appeals if the chief judge who rendered the order, or a judge of the District of Columbia Court of Appeals, issues a certificate of probable cause. The appeal shall be expedited by the District of Columbia Court of Appeals. An application for a writ of habeas corpus on behalf of a person who is authorized to demand a hearing pursuant to this subsection shall not be entertained if it appears that the applicant has failed to demand such a hearing or that the chief judge, after hearing, has ordered him delivered over, unless it also appears that the remedy by hearing is inadequate or ineffective to test the legality of his detention.

(f) Nothing contained in this subsection shall prevent a person from waiving his right to appear before the chief judge of the Superior Court and voluntarily returning in custody of a proper official to the jurisdiction of the State which is demanding him.

(g) No person demanded by the Governor of a State pursuant to this section shall be released upon bond or other obligation except pursuant to an order of a court of the demanding State.

(h) Any associate judge designated by the chief judge or acting chief judge shall have the same power to act pursuant to this section as the chief judge. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 632.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–702, 23–706.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 23–401 and other sections in title 23 in 1967 edition]

Affidavit—Sufficiency of

Affidavit for interstate rendition of an accused which is framed in the conclusory statutory language and which lacks any identification of sources does not show probable cause under the Fourth Amendment to the United States Constitution. *O. L. Kirkland and E. Smith* v. *P. H. Preston and L. Moore* (1967, 385 F. 2d 670, 128 U.S. App. D.C. 148).

Where affidavit submitted by Florida authorities in support of extradition alleged in conclusory statutory language that accuseds were guilty of second-degree arson, affidavit was insufficient to show probable cause for extradition and accuseds were entitled to writ of habeas corpus releasing them from custody of asylum jurisdiction. *Id.*

Criminal arrest

Apprehension of a fugitive for purpose of extradition is a "criminal arrest" since it deprives fugitive of his liberty for purposes of insuring his presence at criminal trial. *O. L. Kirkland and E. Smith* v. *P. H. Preston and L. Moore* (1967, 385 F. 2d 670, 128 U.S. App. D.C. 148).

Fourth Amendment Standards

Affidavit submitted by demanding state to chief executive of asylum state for extradition of fugitive must present facts sufficient to establish a showing of probable cause under Fourth Amendment standards. *O. L. Kirkland and E. Smith* v. *P. H. Preston and L. Moore* (1967, 385 F. 2d 670, 128 U.S. App. D.C. 148).

The Fourth Amendment, which governs arrests, governs extradition arrests. *Id.*

To be valid under the Fourth Amendment, an arrest must be preceded by a finding of probable cause. *Id.*

Indictment

When an extradition demand is accompanied by an indictment, that document embodies a grand jury's judgment that constitutional probable cause exists. *O. L. Kirkland and E. Smith* v. *P. H. Preston and L. Moore* (1967. 385 F. 2d 670, 128 U.S. App. D.C. 148).

Original jurisdiction

The Chief Judge of District Court in District of Columbia exercises an executive function by presiding at extradition hearings and General Sessions Court exercises a judicial function by issuing detention warrant and setting bail, thus there is no court having original jurisdiction over offense within appeal provisions of Bail Reform Act, and appeal from an order of detention is, therefore, properly directed to District of Columbia Court of Appeals. *J. T. Hoffman* v. *United States* (1968, 403 F. 2d 927, 131 U.S. App. D.C. 201).

§ 23–705. Removal proceedings and returns to foreign countries not affected

Nothing contained in this chapter shall repeal, modify, or in any way affect existing law concerning the procedure for the return of any person apprehended in the District of Columbia to a Federal judicial district to answer a Federal charge, or repeal, modify, or affect existing law or treaty concerning the return to a foreign country of a person apprehended or detained in the District of Columbia as a fugitive from a foreign country. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 633.)

§ 23–706. Confinement

(a) The agent of the demanding State to whom the prisoner may have been delivered in accordance with the provisions of section 23–704, may, when necessary, confine the prisoner in a facility of the District of Columbia Department of Corrections, and the Department of Corrections must receive and safely keep the prisoner for such reasonable time as will enable the officer or person having charge of him to proceed on his route, such officer or person being chargeable with the expense of keeping.

(b) The officer or agent of a demanding State to whom a prisoner may have been delivered following extradition proceedings in another State, or to whom a prisoner may have been delivered after waiving extradition in the other State, and who is passing through the District of Columbia with a prisoner for the purpose of immediately returning the prisoner to the demanding State, may, when necessary, confine the prisoner in a facility of the Department of Corrections.

The Department of Corrections must receive and safely keep the prisoner for such reasonable time as will enable the officer or agent to proceed on his route, such officer or agent being chargeable with the expense of keeping. That officer or agent shall produce and show to the Department of Corrections satisfactory written evidence of the fact that he is actually transporting the prisoner to the demanding State after a requisition by the executive authority of the demanding State. The prisoner shall not be entitled to demand a new requisition while in the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 633.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–707. Definitions

For purposes of this chapter—

(1) the term "State" includes any territory or possession of the United States; and

(2) the term "Governor" means the executive authority of a State.

(July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 634.)

Chapter 9.—FRESH PURSUIT

Sec.
23–901. Arrests in the District of Columbia by officers of other States.
23–902. Hearing; commitment; discharge.
23–903. "Fresh pursuit" defined.

§ 23–901. Arrests in the District of Columbia by officers of other States

Any member of a duly organized peace unit of any State (or county or municipality thereof) of the United States who enters the District of Columbia in fresh pursuit and continues within the District of Columbia in fresh pursuit of a person in order to arrest him on the ground that he is believed to have committed a felony in such State shall have the same authority to arrest and hold that person in custody as has any member of any duly organized peace unit of the District of Columbia to arrest and hold in custody a person on the ground that he is believed to have committed a felony in the District of Columbia. This section shall not be construed so as to make unlawful any arrest in the District of Columbia which would otherwise be lawful. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 634.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–581, 23–902.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 23–501 and other sections in title 23, in 1967 edition]

Compliance with laws of neighboring jurisdiction

Defendants who were observed by Maryland officers parking in an alley and attempting to gain admission to motel located near boundary between Maryland and District of Columbia, Maryland officer's failure to comply with District of Columbia Fresh Pursuit Statute did not vitiate defendants' arrests which took place just beyond dividing line. *C. L. Boddie et al.* v. *State of Maryland* (Md. App. 1969, 252 A. 2d 290).

Maryland officers who are making arrest in District of Columbia may not with impunity ignore District of Columbia's Fresh Pursuit Statute. *Id.*

Probable cause for arrest

An arresting officer observing defendants park automobile in an alley alongside a motel and attempt to enter motel at 4:36 a.m. and who knew of prior motel holdups including one that night had probable cause to believe that defendants had committed felony. *C. L. Boddie et al.* v. *State of Maryland* (Md. App. 1969, 252 A. 2d 290).

Probable cause for an arrest exists when facts and circumstances within the knowledge of arresting officer, or of which he has reasonably trustworthy information, are sufficient to warrant reasonably cautious person to believe that felony has been committed by person arrested. *Id.*

Only a probability, and not prima facie showing, of criminal activity is the standard of probable cause for arrest. *Id.*

The rule of probable cause for an arrest is nontechnical conception of reasonable ground for belief of guilt, requiring less evidence for such belief than would justify conviction, but more evidence than that which would arouse mere suspicion. *Id.*

The fact that officer, who had probable cause to arrest defendants on a charge of assault with intent to murder, did not arrest defendants on that offense, or that defendants were subsequently acquitted of such offense, did not mean that arresting officer did not have probable cause to arrest. *Id.*

Legality of arrest is measured by existence of probable cause at time of arrest. *Id.*

§ 23–902. Hearing; commitment; discharge

If an arrest is made in the District of Columbia by an officer of another State in accordance with the provisions of section 23–901, he shall without unnecessary delay take the person arrested before a judge of the Superior Court of the District of Columbia, who shall conduct a hearing for the purpose of determining the lawfulness of the arrest. If the judge determines that the arrest was lawful, he

shall order the release or detention of the person arrested, pursuant to section 23–702, to await for a reasonable time a requisition from the Governor of the State demanding the extradition of the person arrested. If the judge determines that the arrest was unlawful he shall order the person discharged. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 634.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–903. "Fresh pursuit" defined

For purposes of this chapter, the term "fresh pursuit" shall include fresh pursuit as defined by the common law, also the pursuit of a person who has committed a felony or one whom the pursuing officer has reasonable grounds to believe has committed a felony. It shall also include the pursuit of a person whom the pursuing officer has reasonable grounds to believe has committed a felony, although no felony has actually been committed, if there is reasonable ground for believing that a felony has been committed. Such term shall not necessarily imply an instant pursuit, but pursuit without unreasonable delay. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 634.)

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 23–504 and other sections in title 23, in 1967 edition]

Compliance with laws of neighboring jurisdiction

Defendants who were observed by Maryland officers parking in an alley and attempting to gain admission to motel located near boundary between Maryland and District of Columbia, Maryland officer's failure to comply with District of Columbia Fresh Pursuit Statute did not vitiate defendants' arrests which took place just beyond dividing line. *C. L. Boddie et al.* v. *State of Maryland* (Md. App. 1969, 252 A. 2d 290).

Maryland officers who are making arrest in District of Columbia may not with impunity ignore District of Columbia's Fresh Pursuit Statute. *Id.*

Chapter 11.—PROFESSIONAL BONDSMEN

Sec.
23–1101. Definitions.
23–1102. Bonding business impressed with public interest.
23–1103. Procuring business through official or attorney for a consideration prohibited.
23–1104. Attorneys procuring employment through official or bondsman for a consideration prohibited.
23–1105. Receiving other than regular fee for bonding prohibited; bondsmen prohibited from endeavoring to secure dismissal or settlement.
23–1106. Posting names of authorized bondsmen; list to be furnished prisoners; prisoners may communicate with bondsmen; record to be kept by police.
23–1107. Bondsmen prohibited from entering place of detention unless requested by prisoner; record of visit to be kept.
23–1108. Qualifications of bondsmen; rules to be prescribed by courts; list of agents to be furnished; renewal of authority to act; detailed records to be kept; penalties and disqualifications.
23–1109. Giving advance information of proposed raid prohibited.
23–1110. Designation of official to take bail or collateral when court is not in session; issuance of citations.
23–1111. Penalties.
23–1112. Enforcement.

§ 23–1101. Definitions

For purposes of this chapter—

(1) the term "bonding business" means the business of becoming surety for compensation upon bonds in criminal cases in the District of Columbia; and

(2) the term "bondsman" means any person or corporation engaged in the bonding business either as a principal or as an agent, clerk, or representative of another engaged in such business.

(July 29, 1970, Pub. L. 91–358; § 210(a), title II, 84 Stat. 635.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–1102. Bonding business impressed with public interests

The bonding business is impressed with a public interest. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 635.)

§ 23–1103. Procuring business through official or attorney for a consideration prohibited

It shall be unlawful for any bondsman, either directly or indirectly, to give, donate, lend, contribute, or to promise to give, donate, lend, or contribute any money, property, entertainment, or other thing of value whatsoever to any attorney at law, police officer, deputy United States marshal, jailer, probation officer, clerk, or other attaché of a criminal court, or public official of any character, for procuring or assisting in procuring any person to employ the bondsman to execute as surety any bond for compensation in any criminal case in the District of Columbia. It shall be unlawful for any attorney at law, police officer, deputy United States marshal, jailer, probation officer, clerk, bailiff, or other attaché of a criminal court, or public official of any character, to accept or receive from a bondsman any money, property, entertainment, or other thing of value whatsoever for procuring or assisting in procuring a person to employ a bondsman to execute as surety any bond for compensation in a criminal case in the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 635.)

§ 23–1104. Attorneys procuring employment through official or bondsman for a consideration prohibited

It shall be unlawful for any attorney at law, either directly or indirectly, to give, loan, donate, contribute, or to promise to give, loan, donate, or contribute any money, property, entertainment, or other thing of value whatsoever to, or to split or divide any fee or commission with, any bondsman, police officer, deputy United States marshal, probation officer, bailiff, clerk, or other attaché of any criminal court for causing or procuring or assisting in causing or procuring a person to employ the attorney to represent him in a criminal case in the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 635.)

§ 23–1105. Receiving other than regular fee for bonding prohibited; bondsmen prohibited from endeavoring to secure dismissal or settlement

It shall be lawful to charge for executing a bond in a criminal case in the District of Columbia, but it shall be unlawful for a bondsman, either directly

or indirectly, to charge, accept, or receive a sum of money, or other thing of value, other than the regular fee for bonding, from a person for whom he has executed bond, for any other service whatever performed in connection with any indictment, information, or charge upon which the person is bailed or held in the District of Columbia. It also shall be unlawful for any bondsman to settle, or attempt to settle, or to procure or attempt to procure the dismissal of any indictment, information, or charge against any person in custody or held upon bond in the District of Columbia, with a court, or with the prosecuting attorney in a court in the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 210(a) title II, 84 Stat. 636.)

§ 23–1106. Posting names of authorized bondsmen; list to be furnished prisoners; prisoners may communicate with bondsmen; record to be kept by police

A typewritten or printed list alphabetically arranged of all persons engaged under the authority of any of the courts of criminal jurisdiction in the District of Columbia in the business of becoming surety upon bonds for compensation in criminal cases shall be posted in a conspicuous place in each police precinct, jail, prisoner's dock, house of detention, and every other place in the District of Columbia in which persons in custody of the law are detained, and one or more copies thereof kept on hand; and when a person who is detained in custody in a place of detention shall request a person in charge thereof to furnish him the name of a bondsman, or to put him in communication with a bondsman, the list shall be furnished to the person in charge of the place of detention within a reasonable time to put the person detained in communication with the bondsman selected, and the person in charge of the place of detention shall contemporaneously with that transaction make in the blotter or book of record kept in the place of dentention, a record showing the name of the person requesting the bondsman, the offense with which the person is charged, the time at which the request was made, the bondsman requested, and the person by whom the bondsman was called, and preserve that as a permanent record in the book or blotter in which entered. (July 29, 1970. Pub. L. 91–358, § 210(a), title II, 84 Stat. 636.)

§ 23–1107. Bondsmen prohibited from entering place of detention unless requested by prisoner; record of visit to be kept

It shall be unlawful for a bondsman to enter a police precinct, jail, prisoner's dock, house of detention, or other place where persons in the custody of the law are detained in the District of Columbia for the purpose of obtaining employment as a bondsman, without having been previously called by a person detained or by some relative or other authorized person acting for or on behalf of the person detained. Whenever a bondsman enters a police precinct, jail, prisoner's dock, house of detention, or other place where persons in the custody of the law are detained in the District of Columbia, he shall forthwith give to the person in charge thereof his mission there and the name of the person calling him and requesting him to come to such place. That information shall be recorded by the person in charge of the place of detention and preserved as a public record, and the failure of the bondsman to give that information, or the failure of the person in charge of the place of detention to make and preserve a record of that information, shall constitute a violation of this chapter. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 636.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–1108. Qualifications of bondsmen; rules to be prescribed by courts; list of agents to be furnished; renewal of authority to act; detailed records to be kept; penalties and disqualifications

(a) It shall be the duty of the United States District Court for the District of Columbia and the Superior Court of the District of Columbia, each, to provide, under reasonable rules and regulations, the qualifications of persons and corporations applying for authority to engage in the bonding business in criminal cases in the District of Columbia, and the terms and conditions upon which the business shall be carried on, and no person or corporation shall, either as principal, or as agent, clerk, or representative of another, engage in the bonding business in either court until he shall, by order of the court, be authorized to do so. The courts, in making these rules and regulations, and in granting authority to persons to engage in the bonding business, shall take into consideration both the financial responsibility and the moral qualities of the person so applying, and no person shall be permitted to engage, either as principal or agent, in the bonding business, who has ever been convicted of an offense involving moral turpitude, or who is not known to be a person of good moral character. It shall be the duty of each of the courts to require every person qualifying to engage in the bonding business as principal to file with the court a list showing the name, age, and residence of each person employed by the bondsman as agent, clerk, or representative in the bonding business, and require an affidavit from each of these persons stating that he will abide by the terms and provisions of this chapter. Each of the courts shall require the authority of each of those persons to be renewed from time to time at such periods as the court may by rule provide, and before the authority shall be renewed the court shall require from each of those persons an affidavit that since his previous qualification to engage in the bonding business he has abided by the provisions of this chapter, and any person swearing falsely in any of the affidavits shall be guilty of perjury.

(b) Each court shall prescribe such rules and regulations as may be necessary to insure that whenever a bondsman becomes surety for compensation upon a bond in a criminal case before the court, the bondsman shall make a record, which shall be accurate to the best of the maker's knowledge and belief and shall thereafter be open for inspection by the court or its designated representative, and by the designated representative of other law enforcement agencies of the District of Columbia, of the following matters:

(1) the full name and address of the person for whom the bond is executed (referred to in this

subsection as the "defendant") and the full name and address of his employer, if any;

(2) the offense with which the defendant is charged;

(3) the name of the court or officer authorizing the defendant's admission to bail;

(4) the amount of the bond;

(5) the name of the person who called the bondsman, if other than the defendant;

(6) the amount of the bondsman's charge for executing the bond;

(7) the full name and address of the person to whom the bondsman presented his bill for the charge;

(8) the full name and address of the person paying the charge; and

(9) the manner of payment of the charge.

Whoever violates any rule or regulation prescribed under this subsection shall be fined not more than $500 or imprisoned not more than six months, or both, and if he is a bondsman shall be disqualified from thereafter engaging in any manner in the bonding business for such period of time as the trial judge shall order. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 637.)

§ 23–1109. Giving advance information of proposed raid prohibited

It shall be unlawful for any police officer or other public official, in advance of any raid by police or other peace officers or public officials or the execution of any search warrant or warrant of arrest, to give or furnish, either directly or indirectly, any information concerning the proposed raid or arrest to any person engaged in any manner in the bonding business, or to any attorney at law; but it shall not be unlawful for any police or other peace officer, in conducting any raid or in executing any search warrant or warrant of arrest, to communicate to any attorney at law or person engaged in the bonding business, any fact necessary to enable the officer to obtain from the attorney at law or person engaged in the bonding business information necessary to enable the officer to carry out the raid or execute the process. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 638.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–1110. Designation of official to take bail or collateral when court is not in session; issuance of citations

(a) The judges of the Superior Court of the District of Columbia shall have the authority to appoint some official of the Metropolitan Police Department to act as a clerk of the court with authority to take bail or collateral from persons charged with offenses triable in the Superior Court at all times when the court is not open and its clerks accessible. The official so appointed shall have the same authority at those times with reference to taking bonds or collateral as the clerk of the Municipal Court had on March 3, 1933; shall receive no compensation for these services other than his regular salary; shall be subject to the orders and rules of the Superior Court in discharge of his duties, and may be removed as the clerk at any time by the judges of the court. The United States District Court for the District of Columbia shall have power to authorize the official appointed by the Superior Court to take bond of persons arrested upon writs and process from that court in criminal cases between 4 o'clock postmeridian and 9 o'clock antemeridian and upon Sundays and holidays, and shall have power at any time to revoke the authority granted by it.

(b)(1) An officer or member of the Metropolitan Police Department who arrests without a warrant a person for committing a misdemeanor may, instead of taking him into custody, issue a citation requiring the person to appear before an official of the Metropolitan Police Department designated under subsection (a) of this section to act as a clerk of the Superior Court.

(2) Whenever a person is arrested without a warrant for committing a misdemeanor and is booked and processed pursuant to law, an official of the Metropolitan Police Department designated under subsection (a) of this section to act as a clerk of the Superior Court may issue a citation to him for an appearance in court or at some other designated place, and release him from custody.

(3) No citation may be issued under paragraph (1) or (2) unless the person authorized to issue the citation has reason to believe that the arrested person will not cause injury to persons or damage to property and that he will make an appearance in answer to the citation.

(4) Whoever willfully fails to appear as required in a citation, shall be fined not more than the maximum provided for the misdemeanor for which such citation was issued or imprisoned for not more than one year, or both. Prosecution under this paragraph shall be by the prosecuting officer responsible for prosecuting the offense for which the citation is issued. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 638.)

§ 23–1111. Penalties

Any person violating any provision of this chapter shall be fined not less than $50 nor more than $100, or imprisoned for not less than ten nor more than sixty days, or both, where no other penalty is provided by this chapter; and if the person so convicted is (1) a police officer or other public official, he shall upon recommendation of the trial judge also be forthwith dismissed from office, (2) a bondsman, he shall be disqualified from thereafter engaging in any manner in the bonding business for such a period of time as the trial judge shall order, or (3) an attorney at law, he shall be subject to suspension or disbarment as attorney at law. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 639.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–1112. Enforcement

It shall be the duty of the Superior Court and of the United States District Court for the District of Columbia to see that this chapter is enforced, and upon the impaneling of each grand jury in the District of Columbia it shall be the duty of the judge

impaneling such jury to charge it to investigate the manner in which this chapter is enforced and all violations thereof in connection with the matter under investigation by such jury. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 639.)

Chapter 13.—BAIL AGENCY AND PRETRIAL DETENTION

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–923, 23–104.

SUBCHAPTER I.—DISTRICT OF COLUMBIA BAIL AGENCY

Sec.
23–1301. District of Columbia Bail Agency.
23–1302. Definitions.
23–1303. Interviews with detainees; investigations and reports; information as confidential; consideration and use of reports in making bail determinations.
23–1304. Executive committee; composition; appointment and qualifications of Director.
23–1305. Duties of Director; compensation; tenure.
23–1306. Chief assistant and other agency personnel; compensation.
23–1307. Annual reports to executive committee, Congress, and Commissioner.
23–1308. Budget estimates.

SUBCHAPTER II.—RELEASE AND PRETRIAL DETENTION

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SUBCHAPTER I.—DISTRICT OF COLUMBIA BAIL AGENCY

§ 23–1301. District of Columbia Bail Agency

The District of Columbia Bail Agency (hereafter in this subchapter referred to as the "agency") shall continue in the District of Columbia and shall secure pertinent data and provide for any judicial officer in the District of Columbia or any officer or member of the Metropolitan Police Department issuing citations, reports containing verified information concerning any individual with respect to whom a bail or citation determination is to be made. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 639.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–1302. Definitions

As used in this chapter—

(1) the term "judicial officer" means, unless otherwise indicated, the Supreme Court of the United States, the United States Court of Appeals for the District of Columbia Circuit, the District of Columbia Court of Appeals, United States District Court for the District of Columbia, the Superior Court of the District of Columbia or any justice or judge of those courts or a United States commissioner or magistrate; and

(2) the term "bail determination" means any order by a judicial officer respecting the terms and conditions of detention or release (including any order setting the amount of bail bond or any other kind of security) made to assure the appearance in court of—

(A) any person arrested in the District of Columbia, or

(B) any material witness in any criminal proceeding in a court referred to in paragraph (1).

(July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 640.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–1303.

§ 23–1303. Interviews with detainees; investigations and reports; information as confidential; consideration and use of reports in making bail determinations

(a) The agency shall, except when impracticable, interview any person detained pursuant to law or charged with an offense in the District of Columbia who is to appear before a judicial officer or whose case arose in or is before any court named in section 23–1302(1). The interview, when requested by a judicial officer, shall also be undertaken with respect to any person charged with intoxication or a traffic violation. The agency shall seek independent verification of information obtained during the interview, shall secure any such person's prior criminal record which shall be made available by the Metropolitan Police Department, and shall prepare a written report of the information for submission to the appropriate judicial officer. The report to the judicial officer shall, where appropriate, include a recommendation as to whether such person should be released or detained under any of the conditions specified in subchapter II of this chapter. If the agency does not make a recommendation, it shall submit a report without recommendation. The agency shall provide copies of its report and recommendations (if any) to the United States attorney for the District of Columbia or the Corporation Counsel of the District of Columbia, and to counsel for the person concerning whom the report is made. The report shall include but not be limited to information concerning the person accused, his family, his community ties, residence, employment, and prior criminal record, and may include such additional verified information as may become available to the agency.

(b) With respect to persons seeking review under subchapter II of this chapter of their detention or conditions of release, the agency shall review its report, seek and verify such new information as may be necessary, and modify or supplement its report to the extent appropriate.

(c) The agency, when requested by any appellate court or a judge or justice thereof, or by any other judicial officer, shall furnish a report as provided in subsection (a) of this section respecting any person whose case is pending before any such appellate court or judicial officer or in whose behalf an application for a bail determination shall have been submitted.

(d) Any information contained in the agency's files, presented in its report, or divulged during the

course of any hearing shall not be admissible on the issue of guilt in any judicial proceeding, but such information may be used in proceedings under sections 23–1327, 23–1328, and 23–1329, in perjury proceedings, and for the purposes of impeachment in any subsequent proceeding.

(e) The agency, when reqested by a member or officer of the Metropolitan Police Department acting pursuant to court rules governing the issuance of citations in the District of Columbia, shall furnish to such member or officer a report as provided in subsection (a).

(f) The preparation and the submission by the agency of its report as provided in this section shall be accomplished at the earliest practicable opportunity.

(g) A judicial officer in making a bail determination shall consider the agency's report and its accompanying recommendation, if any. The judicial officer may order such detention or may impose such terms and set such conditions upon release, including requiring the execution of a bail bond with sufficient solvent sureties as shall appear warranted by the facts, except that such judicial officer may not order any detention or establish any term or condition for release not otherwise authorized by law.

(h) The agency shall—

(1) supervise all persons released on nonsurety release, including release on personal recognizance, personal bond, nonfinancial conditions, or cash deposit or percentage deposit with the registry of the court;

(2) make reasonable effort to give notice of each required court appearance to each person released by the court;

(3) serve as coordinator for other agencies and organizations which serve or may be eligible to serve as custodians for persons released under supervision and advise the judicial officer as to the eligibility, availability, and capacity of such agencies and organizations;

(4) assist persons released pursuant to subchapter II of this chapter in securing employment or necessary medical or social services;

(5) inform the judicial officer and the United States attorney for the District of Columbia or the Corporation Counsel of the District of Columbia of any failure to comply with pretrial release conditions or the arrest of persons released under its supervision and recommend modifications of release conditions when appropriate;

(6) prepare, in cooperation with the United States marshal for the District of Columbia and the United States attorney for the District of Columbia, such pretrial detention reports as are required by Rule 46(h) of the Federal Rules of Criminal Procedure; and

(7) perform such other pretrial functions as the executive committee may, from time to time, assign.

(July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 640.)

EFFECTIVE DATE

See note preceding section 23–101.

NOTES TO DECISIONS UNDER PRIOR LAW

[See also § 23–909 and other sections in title 23, in 1967 edition]

Original jurisdiction

The Chief Judge of District Court in District of Columbia exercises an executive function by presiding at extradition hearings and General Sessions Court exercises a judicial function by issuing detention warrant and setting bail, thus there is no court having original jurisdiction over offense within appeal provisions of Bail Reform Act, an appeal from an order of detention is, therefore, properly directed to District of Columbia Court of Appeals. *J. T. Hoffman* v. *United States* (1968, 403 F. 2d 927, 131 U.S. App. D.C. 201).

§ 23–1304. Executive committee; composition; appointment and qualifications of Director

(a) The agency shall function under authority of and be responsible to an executive committee of five members of which three shall constitute a quorum. The executive committee shall be composed of the respective chief judges of the United States Court of Appeals for the District of Columbia Circuit, the United States District Court for the District of Columbia, the District of Columbia Court of Appeals, the Superior Court, or if circumstances may require, the designee of any such chief judge, and a fifth member who shall be selected by the chief judges.

(b) The executive committee shall appoint a Director of the agency who shall be a member of the bar of the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 641.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–1305. Duties of Director; compensation; tenure

The Director of the agency shall be responsible for the supervision and execution of the duties of the agency. The Director shall receive such compensation as may be set by the executive committee but not in excess of the compensation authorized for GS–16 of the General Schedule contained in section 5332 of title 5, United States Code. The Director shall hold office at the pleasure of the executive committee. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 642.)

§ 23–1306. Chief assistant and other agency personnel; compensation

The Director, subject to the approval of the executive committee, shall employ a chief assistant and such assisting and clerical staff and may make assignments of such agency personnel as may be necessary properly to conduct the business of the agency. The staff of the agency, other than clerical, shall be drawn from law students, graduate students, or such other available sources as may be approved by the executive committee. The chief assistant to the Director shall receive compensation as may be set by the executive committee, but in an amount not in excess of the amount authorized for GS–14 of the General Schedule contained in section 5332 of title 5, United States Code, and shall hold office at the pleasure of the executive committee. All other employees of the agency shall receive compensation, as set by the executive committee, which shall be comparable to levels of compensation established in such

chapter 53. From time to time, the Director, subject to the approval of the executive committee, may set merit and longevity salary increases. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 642.)

§ 23–1307. Annual reports to executive committee, Congress, and Commissioner

The Director shall on June 15 of each year submit to the executive committee a report as to the agency's administration of its responsibilities for the previous period of June 1 through May 31, a copy of which report will be transmitted by the executive committee to the Congress of the United States, and to the Commissioner of the District of Columbia. The Director shall include in his report, to be prepared as directed by the Commissioner of the District of Columbia, a statement of financial condition, revenues, and expenses for the past June 1 through May 31 period. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 642.)

§ 23–1308. Budget estimates

Budget estimates for the agency shall be prepared by the Director and shall be subject to the approval of the executive committee. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 642.)

AMENDMENT OF FORMER SECTION

Act Apr. 15, 1970, Pub. L. 91–232, amended former sec. 23–908 (relating to appropriation authorization and budget estimates) by striking out ", but not to exceed $130,000 in any one fiscal year,".

EFFECTIVE DATE

See note preceding section 23–101.

SUBCHAPTER II.—RELEASE AND PRETRIAL DETENTION

§ 23–1321. Release in noncapital cases prior to trial

(a) Any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond in an amount specified by the judicial officer, unless the officer determines, in the exercise of his discretion, that such a release will not reasonably assure the the [1] appearance of the person as required or the safety of any other person or the community. When such a determination is made, the judicial officer shall, either in lieu of or in addition to the above methods of release, impose the first of the following conditions of release which will reasonably assure the appearance of the person for trial or the safety of any other person or the community, or, if no single condition gives that assurance, any combination of the following conditions:

(1) Place the person in the custody of a designated person or organization agreeing to supervise him.

(2) Place restrictions on the travel, association, or place of abode of the person during the period of release.

(3) Require the execution of an appearance bond in a specified amount and the deposit in the registry of the court, in cash or other security as directed, of a sum not to exceed 10 per centum of the amount of the bond, such deposit to be returned upon the performance of the conditions of release.

(4) Require the execution of a bail bond with sufficient solvent sureties, or the deposit of cash in lieu thereof.

(5) Impose any other condition, including a condition requiring that the person return to custody after specified hours of release for employment or other limited purposes.

No financial condition may be imposed to assure the safety of any other person or the community.

(b) In determining which conditions of release, if any, will reasonably assure the appearance of a person as required or the safety of any other person or the community, the judicial officer shall, on the basis of available information, take into account such matters as the nature and circumstances of the offense charged, the weight of the evidence against such person, his family ties, employment, financial resources, character and mental conditions, past conduct, length of residence in the community, record of convictions, and any record of appearance at court proceedings, flight to avoid prosecution, or failure to appear at court proceedings.

(c) A judicial officer authorizing the release of a person under this section shall issue an appropriate order containing a statement of the conditions imposed, if any, shall inform such person of the penalties applicable to violations of the conditions of his release, shall advise him that a warrant for his arrest will be issued immediately upon any such violation, and shall warn such person of the penalties provided in section 23–1328.

(d) A person for whom conditions of release are imposed and who, after twenty-four hours from the time of the release hearing, continues to be detained as a result of his inability to meet the conditions of release, shall, upon application, be entitled to have the conditions reviewed by the judicial officer who imposed them. Unless the conditions of release are amended and the person is thereupon released, the judicial officer shall set forth in writing the reasons for requiring the conditions imposed. A person who is ordered released on a condition which requires that he return to custody after specified hours shall, upon application, be entitled to a review by the judicial officer who imposed the condition. Unless the requirement is removed and the person is thereupon released on another condition, the judicial officer shall set forth in writing the reasons for continuing the requirement. In the event that the judicial officer who imposed conditions of release is not available, any other judicial officer may review such conditions.

(e) A judicial officer ordering the release of a person on any condition specified in this section may at any time amend his order to impose additional or different conditions of release, except that if the imposition of such additional or different conditions results in the detention of the person as a result of his inability to meet such conditions or in the release of the person on a condition requiring him to return to custody after specified hours, the provisions of subsection (d) shall apply.

(f) Information stated in, or offered in connection with, any order entered pursuant to this section need

[1] So in original.

not conform to the rules pertaining to the admissibility of evidence in a court of law.

(g) Nothing contained in this section shall be construed to prevent the disposition of any case or class of cases by forfeiture of collateral security where such disposition is authorized by the court.

(h) The following shall be applicable to any person detained pursuant to this subchapter:

(1) The person shall be confined, to the extent practicable, in facilities separate from convicted persons awaiting or serving sentences or being held in custody pending appeal.

(2) The person shall be afforded reasonable opportunity for private consultation with counsel and, for good cause shown, shall be released upon order of the judicial officer in the custody of the United States marshal or other appropriate person for limited periods of time to prepare defenses or for other proper reasons.

(July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 642.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–1322 to 23–1326, 23–1328, 23–1329.

§ 23–1322. Detention prior to trial

(a) Subject to the provisions of this section, a judicial officer may order pretrial detention of—

(1) a person charged with a dangerous crime, as defined in section 23–1331(3), if the Government certifies by motion that based on such person's pattern of behavior consisting of his past and present conduct, and on the other factors set out in section 23–1321(b), there is no condition or combination of conditions which will reasonably assure the safety of the community;

(2) a person charged with a crime of violence, as defined in section 23–1331(4), if (i) the person has been convicted of a crime of violence within the ten-year period immediately preceding the alleged crime of violence for which he is presently charged; or (ii) the crime of violence was allegedly committed while the person was, with respect to another crime of violence, on bail or other release or on probation, parole, or mandatory release pending completion of a sentence; or

(3) a person charged with any offense if such person, for the purpose of obstructing or attempting to obstruct justice, threatens, injures, intimidates, or attempts to threaten, injure, or intimidate any prospective witness or juror.

(b) No person described in subsection (a) of this section shall be ordered detained unless the judicial officer—

(1) holds a pretrial detention hearing in accordance with the provisions of subsection (c) of this section;

(2) finds—

(A) that there is clear and convincing evidence that the person is a person described in paragraph (1), (2), or (3) of subsection (a) of this section;

(B) that—

(i) in the case of a person described only in paragraph (1) of subsection (a), based on such person's pattern of behavior consisting of his past and present conduct, and on the other factors set out in section 23–1321(b), or

(ii) in the case of a person described in paragraph (2) or (3) of such subsection, based on the factors set out in section 23–1321(b),

there is no condition or combination of conditions of release which will reasonably assure the safety of any other person or the community; and

(C) that, except with respect to a person described in paragraph (3) of subsection (a) of this section, on the basis of information presented by proffer or otherwise to the judicial officer there is a substantial probability that the person committed the offense for which he is present before the judicial officer; and

(3) issues an order of detention accompanied by written findings of fact and the reasons for its entry.

(c) The following procedures shall apply to pretrial detention hearings held pursuant to this section:

(1) Whenever the person is before a judicial officer, the hearing may be initiated on oral motion of the United States attorney.

(2) Whenever the person has been released pursuant to section 23–1321 and it subsequently appears that such person may be subject to pretrial detention, the United States attorney may initiate a pretrial detention hearing by ex parte written motion. Upon such motion the judicial officer may issue a warrant for the arrest of the person and if such person is outside the District of Columbia, he shall be brought before a judicial officer in the district where he is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with the section.

(3) The pretrial detention hearing shall be held immediately upon the person being brought before the judicial officer for such hearing unless the person or the United States attorney moves for a continuance. A continuance granted on motion of the person shall not exceed five calendar days, unless there are extenuating circumstances. A continuance on motion of the United States attorney shall be granted upon good cause shown and shall not exceed three calendar days. The person may be detained pending the hearing.

(4) The person shall be entitled to representation by counsel and shall be entitled to present information by proffer or otherwise, to testify, and to present witnesses in his own behalf.

(5) Information stated in, or offered in connection with, any order entered pursuant to this section need not conform to the rules pertaining to the admissibility of evidence in a court of law.

(6) Testimony of the person given during the hearing shall not be admissible on the issue of guilt in any other judicial proceeding, but such testimony shall be admissible in proceedings under sections 23–1327, 23–1328, and 23–1329, in perjury proceedings, and for the purposes of impeachment in any subsequent proceedings.

(7) Appeals from orders of detention may be taken pursuant to section 23–1324.

(d) The following shall be applicable to persons detained pursuant to this section:

(1) The case of such person shall be placed on an expedited calendar and, consistent with the sound administration of justice, his trial shall be given priority.

(2) Such person shall be treated in accordance with section 23–1321—

(A) upon the expiration of sixty calendar days, unless the trial is in progress or the trial has been delayed at the request of the person other than by the filing of timely motions (excluding motions for continuances); or

(B) whenever a judicial officer finds that a subsequent event has eliminated the basis for such detention.

(3) The person shall be deemed detained pursuant to section 23–1325 if he is convicted.

(e) The judicial officer may detain for a period not to exceed five calendar days a person who comes before him for a bail determination charged with any offense, if it appears that such person is presently on probation, parole, or mandatory release pending completion of sentence for any offense under State or Federal law and that such person may flee or pose a danger to any other person or the community if released. During the five-day period, the United States attorney or the Corporation Counsel for the District of Columbia shall notify the appropriate State or Federal probation or parole officials. If such officials fail or decline to take the person into custody during such period, the person shall be treated in accordance with section 23–1321, unless he is subject to detention under this section. If the person is subsequently convicted of the offense charged, he shall receive credit toward service of sentence for the time he was detained pursuant to this subsection. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 644.)

EFFECTIVE DATE

See note preceding section 23–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–1323, 23–1324, 23–1329.

§ 23–1323. Detention of addict

(a) Whenever it appears that a person charged with a crime of violence, as defined in section 23–1331(4), may be an addict, as defined in section 23–1331(5), the judicial officer may, upon motion of the United States attorney, order such person detained in custody for a period not to exceed three calendar days, under medical supervision, to determine whether the person is an addict.

(b) Upon or before the expiration of three calendar days, the person shall be brought before a judicial officer and the results of the determination shall be presented to such judicial officer. The judicial officer thereupon (1) shall treat the person in accordance with section 23–1321, or (2) upon motion of the United States attorney, may (A) hold a hearing pursuant to section 23–1322, or (B) hold a hearing pursuant to subsection (c) of this section.

(c) A person who is an addict may be ordered detained in custody under medical supervision if the judicial officer—

(1) holds a pretrial detention hearing in accordance with subsection (c) of section 23–1322;

(2) finds that—

(A) there is clear and convincing evidence that the person is an addict;

(B) based on the factors set out in subsection (b) of section 23–1321, there is no condition or combination of conditions of release which will reasonably assure the safety of any other person or the community; and

(C) on the basis of information presented to the judicial officer by proffer or otherwise, there is a substantial probability that the person committed the offense for which he is present before the judicial officer; and

(3) issues an order of detention accompanied by written findings of fact and the reasons for its entry.

(d) The provisions of subsection (d) of section 23–1322 shall apply to this section. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 646.)

EFFECTIVE DATE

See note preceding section 23–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–1324.

§ 23–1324. Appeal from conditions of release

(a) A person who is detained, or whose release on a condition requiring him to return to custody after specified hours is continued, after review of his application pursuant to section 23–1321(d) or section 23–1321(e) by a judicial officer, other than a judge of the court having original jurisdiction over the offense with which he is charged or a judge of a United States court of appeals or a Justice of the Supreme Court, may move the court having original jurisdiction over the offense with which he is charged to amend the order. Such motion shall be determined promptly.

(b) In any case in which a person is detained after (1) a court denies a motion under subsection (a) to amend an order imposing conditions of release, (2) conditions of release have been imposed or amended by a judge of the court having original jurisdiction over the offense charged, or (3) he is ordered detained or an order for his detention has been permitted to stand by a judge of the court having original jurisdiction over the offense charged, an appeal may be taken to the court having appellate jurisdiction over such court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If the order is not so supported, the court may remand the case for a further hearing, or may, with or without additional evidence, order the person released pursuant to section 23–1321(a). The appeal shall be determined promptly.

(c) In any case in which a judicial officer other than a judge of the court having original jurisdiction over the offense with which a person is charged orders his release with or without setting terms or conditions of release, or denies a motion for the pretrial detention of a person, the United States attorney may move the court having original jurisdiction over the offense to amend or revoke the order. Such motion shall be considered promptly.

(d) In any case in which—

(1) a person is released, with or without the setting of terms or conditions of release, or a motion for the pretrial detention of a person is denied, by a judge of the court having original jurisdiction over the offense with which the person is charged, or

(2) a judge of a court having such original jurisdiction does not grant the motion of the United States attorney filed pursuant to subsection (c),

the United States attorney may appeal to the court having appellate jurisdiction over such court. Any order so appealed shall be affirmed if it is supported by the proceedings below. If the order is not so supported, (A) the court may remand the case for a further hearing, (B) with or without additional evidence, change the terms or conditions of release, or (C) in cases in which the United States attorney requested pretrial detention pursuant to sections 23–1322 and 23–1323, order such detention. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 647.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–1322, 23–1325.

§ 23–1325. Release in capital cases or after conviction

(a) A person who is charged with an offense punishable by death shall be treated in accordance with the provisions of section 23–1321 unless the judicial officer has reason to believe that no one or more conditions of release will reasonably assure that the person will not flee or pose a danger to any other person or to the community. If such a risk of flight or danger is believed to exist, the person may be ordered detained.

(b) A person who has been convicted of an offense and is awaiting sentence shall be detained unless the judicial officer finds by clear and convincing evidence that he is not likely to flee or pose a danger to any other person or to the property of others. Upon such finding, the judicial officer shall treat the person in accordance with the provisions of section 23–1321.

(c) A person who has been convicted of an offense and sentenced to a term of confinement or imprisonment and has filed an appeal or a petition for a writ of certiorari shall be detained unless the judicial officer finds by clear and convincing evidence that (1) the person is not likely to flee or pose a danger to any other person or to the property of others, and (2) the appeal or petition for a writ of certiorari raises a substantial question of law or fact likely to result in a reversal or an order for new trial. Upon such findings, the judicial officer shall treat the person in accordance with the provisions of section 23–1321.

(d) The provisions of section 23–1324 shall apply to persons detained in accordance with this section, except that the finding of the judicial officer that the appeal or petition for writ of certiorari does not raise by clear and convincing evidence a substantial question of law or fact likely to result in a reversal or order for new trial shall receive de novo consideration in the court in which review is sought. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 647.)

EFFECTIVE DATE

See note preceding section 23–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–1322.

§ 23–1326. Release of material witnesses

If it appears by affidavit that the testimony of a person is material in any criminal proceeding, and if it is shown that it may become impracticable to secure his presence by subpena, a judicial officer shall impose conditions of release pursuant to section 23–1321. No material witness shall be detained because of inability to comply with any condition of release if the testimony of such witness can adequately be secured by deposition, and further detention is not necessary to prevent a failure of justice. Release may be delayed for a reasonable period of time until the deposition of the witness can be taken pursuant to the Federal Rules of Criminal Procedure. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 648.)

§ 23–1327. Penalties for failure to appear

(a) Whoever, having been released under this title prior to the commencement of his sentence, willfully fails to appear before any court or judicial officer as required, shall, subject to the provisions of the Federal Rules of Criminal Procedure, incur a forfeiture of any security which was given or pledged for his release, and, in addition, shall, (1) if he was released in connection with a charge of felony, or while awaiting sentence or pending appeal or certiorari prior to commencement of his sentence after conviction of any offense, be fined not more than $5,000 and imprisoned not less than one year and not more than five years, (2) if he was released in connection with a charge of misdemeanor, be fined not more than the maximum provided for such misdemeanor and imprisoned for not less than ninety days and not more than one year, or (3) if he was released for appearance as a material witness, be fined not more than $1,000 or imprisoned for not more than one year, or both.

(b) Any failure to appear after notice of the appearance date shall be prima facie evidence that such failure to appear is willful. Whether the person was warned when released of the penalties for failure to appear shall be a factor in determining whether such failure to appear was willful, but the giving of such warning shall not be a prerequisite to conviction under this section.

(c) The trier of facts may convict under this section even if the defendant has not received actual notice of the appearance date if (1) reasonable efforts to notify the defendant have been made, and (2) the defendant, by his own actions, has frustrated the receipt of actual notice. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 648.)

(d) Any term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment.

EFFECTIVE DATE

See note preceding section 23–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–1303, 23–1322.

§ 23–1328. Penalties for offenses committed during release

(a) Any person convicted of an offense committed while released pursuant to section 23–1321 shall be subject to the following penalties in addition to any other applicable penalties:

(1) A term of imprisonment of not less than one year and not more than five years if convicted of committing a felony while so released; and

(2) A term of imprisonment of not less than ninety days and not more than one year if convicted of committing a misdemeanor while so released.

(b) The giving of a warning to the person when released of the penalties imposed by this section shall not be a prerequisite to the application of this section.

(c) Any term of imprisonment imposed pursuant to this section shall be consecutive to any other sentence of imprisonment. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 649.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–1303, 23–1321, 23–1322.

§ 23–1329. Penalties for violation of conditions of release

(a) A person who has been conditionally released pursuant to section 23–1321 and who has violated a condition of release shall be subject to revocation of release, an order of detention, and prosecution for contempt of court.

(b) Proceedings for revocation of release may be initiated on motion of the United States attorney. A warrant for the arrest of a person charged with violating a condition of release may be issued by a judicial officer and if such person is outside the District of Columbia he shall be brought before a judicial officer in the district where he is arrested and shall then be transferred to the District of Columbia for proceedings in accordance with this section. No order of revocation and detention shall be entered unless, after a hearing, the judicial officer finds that—

(1) there is clear and convincing evidence that such person has violated a condition of his release; and

(2) based on the factors set out in subsection (b) of section 23–1321, there is no condition or combination of conditions of release which will reasonably assure that such person will not flee or pose a danger to any other person or the community.

The provisions of subsections (c) and (d) of section 23–1322 shall apply to this subsection.

(c) Contempt sanctions may be imposed if, upon a hearing and in accordance with principles applicable to proceedings for criminal contempt, it is established that such person has intentionally violated a condition of his release. Such contempt proceedings shall be expedited and heard by the court without a jury. Any person found guilty of criminal contempt for violation of a condition of release shall be imprisoned for not more than six months, or fined not more than $1,000, or both.

(d) Any warrant issued by a judge of the Superior Court for violation of release conditions or for contempt of court, for failure to appear as required, or pursuant to subsection (c)(2) of section 23–1322, may be executed at any place within the jurisdiction of the United States. Such warrants shall be executed by a United States marshal or by any other officer authorized by law. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 649.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–1303, 23–1322.

§ 23–1330. Contempt

Nothing in this subchapter shall interfere with or prevent the exercise by any court of the United States of its power to punish for contempt. (July 29, 1970, Pub. L. 91–358, § 210(a) title II, 84 Stat. 649.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–1331. Definitions

As used in this subchapter:

(1) The term "judicial officer" means, unless otherwise indicated, any person or court in the District of Columbia authorized pursuant to section 3041 of title 18, United States Code, or the Federal Rules of Criminal Procedure, to bail or otherwise release a person before trial or sentencing or pending appeal in a court of the United States, and any judge of the Superior Court.

(2) The term "offense" means any criminal offense committed in the District of Columbia, other than an offense triable by court-martial, military commission, provost court, or other military tribunal, which is in violation of an Act of Congress.

(3) The term "dangerous crime" means (A) taking or attempting to take property from another by force or threat of force, (B) unlawfully entering or attempting to enter any premises adapted for overnight accommodation of persons or for carrying on business with the intent to commit an offense therein, (C) arson or attempted arson of any premises adaptable for overnight accommodation of persons or for carrying on business, (D) forcible rape, or assault with intent to commit forcible rape, or (E) unlawful sale or distribution of a narcotic or depressant or stimulant drug (as defined by any Act of Congress) if the offense is punishable by imprisonment for more than one year.

(4) The term "crime of violence" means murder, forcible rape, carnal knowledge of a female under the age of sixteen, taking or attempting to take immoral, improper, or indecent liberties with a child under the age of sixteen years, mayhem, kidnaping, robbery, burglary, voluntary manslaughter, extortion or blackmail accompanied by threats of violence, arson, assault with intent to commit any offense, assault with a dangerous weapon, or an attempt or conspiracy to commit any of the foregoing offenses as defined by any Act of Congress or any State law, if the offense is punishable by imprisonment for more than one year.

(5) The term "addict" means any individual who habitually uses any narcotic drug as defined

by section 4731 of the Internal Revenue Code of 1954 so as to endanger the public morals, health, safety, or welfare.

(July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 650.)

REFERENCE IN TEXT

Section 4731 of the Internal Revenue Code of 1954, referred to in par. (5), was repealed by section 1101(b)(3)(A) of Pub. L. 91–513, 84 Stat. 1292. For current definition of "addict", see section 102(1) of the Controlled Substances Act, Pub. L. 91–513, 84 Stat. 1242 (21 U.S.C. 802(1)).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–1322, 23–1323.

§ 23–1332. Applicability of subchapter

The provisions of this subchapter shall apply in the District of Columbia in lieu of the provisions of sections 3146 through 3152 of title 18, United States Code. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 650.)

Chapter 15.—OUT-OF-STATE WITNESSES

Sec.
23–1501. Definitions.
23–1502. Hearing on recall of out-of-State witnesses by State courts; determination; travel allowance; penalty.
23–1503. Certificate providing for attendance of witnesses at criminal prosecutions in the District of Columbia; travel allowance; penalty.
23–1504. Exemption from arrest.

§ 23–1501. Definitions

As used in this chapter—

(1) The term "witness" includes a person whose testimony is desired in any proceeding or investigation by a grand jury or in a criminal action, prosecution, or proceeding.

(2) The term "State" includes the Commonwealth of Puerto Rico, the District of Columbia, the Virgin Islands, Guam, American Samoa, and any other territory or possession of the United States.

(3) The term "summons" includes a subpena, order, or other notice requiring the appearance of a witness. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 650.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–1502. Hearing on recall of out-of-State witnesses by State courts; determination; travel allowance; penalty

(a) If a judge of a court of record in any State which by its laws has made provision for commanding persons within that State to attend and testify in the District of Columbia certifies under the seal of the court (1) that there is a criminal prosecution pending in that court, or that a grand jury investigation has commenced or is about to commence, (2) that a person within the District of Columbia is a material witness in the prosecution or grand jury investigation, and (3) that his presence will be required for a specified number of days, upon presentation of that certificate to any judge of the Superior Court of the District of Columbia, except as provided in subsection (c), such judge shall fix a time and place for a hearing, and shall make an order directing the witness to appear at a time and place certain for the hearing.

(b) If at the hearing the judge determines that the witness is material and necessary, that it will not cause undue hardship to the witness to attend and testify in the prosecution or grand jury investigation in the requesting State, and that the laws of such State and of any other State through which the witness may be required to pass by ordinary course of travel, will give to him protection from arrest and the service of civil and criminal process, he shall issue a summons, with a copy of the certificate attached, directing the witness to attend and testify in the prosecution or grand jury investigation, as the case may be, at a time and place specified in the summons. In any such hearing the certificate shall be prima facie evidence of all the facts stated therein.

(c) If the certificate presented under subsection (a) recommends that the witness be taken into immediate custody and delivered to an officer of the requesting State to assure his attendance, in the requesting State, the judge may in lieu of notification of hearing, direct that the witness be forthwith brought before him for a hearing. If the judge at the hearing is satisfied of the desirability of the custody and delivery of the witness, he may, in lieu of issuing subpena or summons, order the witness to be forthwith taken into custody and delivered to an officer of the requesting State. The certificate shall be prima facie proof of the desirability of the custody and delivery of the witness.

(d) Any witness who is summoned as above provided and, after being paid or tendered by some properly authorized person the fees and allowances authorized for witnesses in criminal cases in United States district courts, fails without good cause to attend and testify as directed in the summons, shall be punished in the manner provided for the punishment of any witness who disobeys a summons issued from the Superior Court. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 651.)

§ 23–1503. Certificate providing for attendance of witnesses at criminal prosecutions in the District of Columbia; travel allowance; penalty

(a) If a person in any State, which by its laws has made provision for commanding persons within its borders to attend and testify in criminal prosecutions or grand jury investigations in the District of Columbia, is a material witness in such a prosecution or a grand jury investigation in the District of Columbia which has commenced or is about to commence, a judge may issue a certificate under seal stating these facts and specifying the number of days the witness will be required. The certificate may include a recommendation that the witness be taken into immediate custody and delivered to an officer of the United States or the District of Columbia to assure his attendance in the District of Columbia. This certificate shall be presented to a judge of a court of record in the county in which the witness is found.

(b) If the witness is summoned to attend and testify in the District of Columbia he shall be tendered the fees and allowances authorized for witnesses in criminal cases in United States district courts. A witness who has appeared in accordance with the provisions of the summons shall not be required to remain within the District of Columbia for

a period longer than that specified in the certificate, unless otherwise ordered by the court. If the witness, after coming into the District of Columbia, fails without good cause to attend and testify as directed in the summons, he may be punished in the manner provided for the punishment of any other witness who disobeys a summons issued from the court in the District of Columbia where the prosecution has been instituted or the grand jury investigation has commenced or is about to commence. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 651.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–1504. Exemption from arrest

(a) Any person who comes into the District of Columbia in obedience to a summons directing him to attend and testify in the District of Columbia shall not, while in the District of Columbia, pursuant to the summons, be subject to arrest or the service of process, civil or criminal, in connection with any matter which arose before his entrance into the District of Columbia under the summons.

(b) Any person who is in the process of passing through the District of Columbia for the purpose of proceeding to or returning from a State which has summoned him to attend and testify shall not be subject to arrest or the service of process, civil or criminal, in connection with any matter which arose at some other time. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 652.)

Chapter 17.—DEATH PENALTY

Sec.
23–1701. Capital punishment.
23–1702. Provision for death chamber; appointment of executioner and assistants; fees.
23–1703. Sentences to be in writing and certified copy furnished.
23–1704. Who may be present at execution; fact of execution to be certified to clerk of court.
23–1705. Place of execution.

§ 23–1701. Capital punishment

The mode of capital punishment in the District of Columbia shall be by the process commonly known as electrocution. The punishment of death shall be inflicted by causing to pass through the body of the convict a current of electricity of sufficient intensity to cause death, and the application of the current shall be continued until the convict is dead. The time fixed for the execution of the sentence shall not be considered an essential part of the sentence, and if it be not executed at the time therein appointed, by reason of the pendency of an appeal or for other cause, the court may appoint another day for carrying the same into execution. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 652.)

EFFECTIVE DATE

See note preceding section 23–101.

§ 23–1702. Provision for death chamber; appointment of executioner and assistants; fees

The Commissioner of the District of Columbia shall provide a death chamber and necessary apparatus for inflicting the death penalty by electrocution and designate an executioner and necessary assistants, not exceeding three in number. The District of Columbia Council shall fix the fees for the executioner and his assistants. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 652.)

§ 23–1703. Sentences to be in writing and certified copy furnished

If a person is sentenced to death for a conviction in the District of Columbia the presiding judge shall sentence the convicted person to death according to the terms of this chapter, and make the sentence in writing, such sentence shall be filed with the papers in the case against the convicted person, and a certified copy thereof shall be transmitted, by the clerk of the court in which such sentence is pronounced, to the District of Columbia Department of Corrections not less than ten days prior to the time fixed in the sentence of the court for the execution. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 652.)

§ 23–1704. Who may be present at execution; fact of execution to be certified to clerk of court

At the execution of the death penalty there shall be present only the following persons: The executioner and his assistant; the prison physician and one other physician if the condemned person so desires; the condemned person's counsel and relatives, not exceeding three, if they so desire; the prison chaplain and such other ministers of the Gospel, not exceeding two, as may attend by desire of the condemned; the superintendent of the prison, or, in the event of his disability, a deputy designated by him; and not fewer than three nor more than five respectable citizens whom the superintendent of the prison shall designate, and, if necessary to insure their attendance, shall subpena to be present. The fact of execution shall be certified by the prison physician and the executioner to the clerk of the court in which sentence was pronounced, which certificate shall be filed by the clerk with the papers in the case. No person under the age of twenty-one years shall be allowed to witness any execution. (July 29, 1970, Pub. L. 91–358, § 210(a), title II, 84 Stat. 653.)

§ 23–1705. Place of execution

Any person adjudged to suffer death shall be executed within the walls of the designated facility of the Department of Corrections, or within the yard or inclosure thereof, and not elsewhere. (July 29, 1970, Pub. L. 91–358, § 210(a), title 84, Stat. 653.)

EFFECTIVE DATE

See note preceding section 23–101.

TITLE 24.—PRISONERS AND THEIR TREATMENT

Chap. Sec.
7. Interstate Agreement on Detainers..... 24–701

Chapter 1.—PROBATION

§ 24–106. Services of a psychiatrist and a psychologist available to probation officers, the Board of Parole and other designated officers.

The Commissioner shall appoint a qualified psychiatrist and a qualified psychologist whose services shall be available to the following officers to assist them in carrying out their duties:

(1) In criminal cases, the judges and probation officers of the United States District Court for the District of Columbia and the judges and Director of Social Services of the Superior Court of the District of Columbia.

(2) The judges and such personnel assigned to the Family Division of the Superior Court as the Chief Judge may designate.

(3) Such officers of the Department of Corrections as the Director thereof shall designate.

(4) The Board of Parole of the District.

(June 29, 1953, 67 Stat. 105, ch. 159, § 405; Aug. 16, 1954, 68 Stat. 730, ch. 737, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, § 159(d), title I, 84 Stat. 577.)

AMENDMENT

1970—Section 159(d) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24–302.

NOTES TO DECISIONS

Procedural safeguards

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act (now title 21, section 501, et seq., D.C. Code) providing full system of procedural safeguards before finding of mental illness can be made. *R. E. Mathews, Jr.* v. *K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

Under section 24–302 providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner may be involuntarily transferrd he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in title 21, section 501 et seq., and same procedures for release from hospital as are embodied in those sections. *Id.*

Chapter 2.—INDETERMINATE SENTENCES AND PAROLES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 22–3202.

§ 24–201. Repealed. July 17, 1947, 61 Stat. 379, ch. 263, § 7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24–201b, 24–203, 24–207.

§ 24–201a. Board of Parole—Rules and regulations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 24–202. Repealed. July 17, 1947, 61 Stat. 379, ch. 263, § 7.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24–203, 24–207.

§ 24–203. Imposition of indeterminate sentences authorized—Life and death sentences.

CROSS REFERENCE

Inapplicability to sentences imposed under 21 U.S.C. 848, see 21 U.S.C. 848(c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24–201c, 24–207.

NOTES TO DECISIONS

Bail in felony-murder case

In view of the outstanding detention record of defendant, who had been convicted four times in an eight-year period for felony-murder in connection with an attempted robbery and whose first three convictions had been reversed, coupled with defendant's strong area ties, his family's help, assured employment, his apparent determination to live a useful and productive life, would be admitted to bail pending appeal from fourth conviction. *United States* v. *E. M. Harrison* (1968, 405 F. 2d 355, 131 U.S. App. D.C. 390).

§ 24–204. Parole authorized—Conditions—Custody.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(210) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (b) relating to rules and regulations permitting the discharge of parolees, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

CROSS REFERENCE

Inapplicability to sentences imposed under 21 U.S.C. 848, see 21 U.S.C. 848(c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24–207.

NOTES TO DECISIONS

Dispositional alternatives

The parole board has a wide choice of dispositional alternatives: (1) it may excuse the violation altogether and withdraw its warrant; (2) it may immediately revoke

parole; and (3) it may withhold revocation until parolee has completed service of his intervening sentence and then revoke parole. *A. Shelton et al.* v. *United States Board of Parole et al.* (1967, 388 F. 2d 567, 128 U.S. App. D.C. 311).

The parole board is vested with broad discretion in the dispositional process. *Id.*

Prompt disposition of consequences of parole violation

Where fact of parole violation has been conclusively established by an adjudication, either state or federal, that a criminal offense was committed during release period, parole violator may apply to parole board for immediate determination of disposition to be made concerning consequences of his parole violation and to seek what is in effect concurrent service on all, or a part of, the unexpired portion of his original sentence with the sentence imposed for criminal offense which constituted the parole violation. *A. Shelton et al.* v. *United States Board of Parole et al.* (1967, 388 F. 2d 567, 128 U.S. App. D.C. 311).

Review

The parole board's selection of a particular disposition, after full and fair consideration of available facts, may be regarded as almost unreviewable, but failure to afford a procedure whereby violator may seek a favorable disposition, or an outright refusal to consider proffered evidence in mitigation, is not immune from judicial review. *A. Shelton et al.* v. *United States Board of Parole et al.* (1967, 388 F. 2d 567, 128 U.S. App. D.C. 311).

Where parole boards recently issued new regulations, in lieu of informal procedures, concerning the processing and disposition of applications for withdrawal or execution of parole violator warrants prior to expiration of the intervening sentence, appeals not otherwise disposed of would be remanded so that petitioners might pursue the administrative remedies provided in those regulations. *Id.*

Judicial reviews of dispositional phase of parole revocation proceedings is available, if at all, only after the violator has pursued his administrative remedies. *Id.*

§ 24–205. Violation of parole—Warrant—Arrest—Return to confinement.

CROSS REFERENCE

Inapplicability to sentences imposed under 21 U.S.C. 848, see 21 U.S.C. 848(c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24–207.

§ 24–206. Revocation of parole after retaking—Hearing—New parole.

CROSS REFERENCE

Inapplicability to sentences imposed under 21 U.S.C. 848, see 21 U.S.C. 848(c).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24–207.

NOTES TO DECISIONS

Dispositional alternatives

The parole board has a wide choice of dispositional alternatives: (1) it may excuse the violation altogether and withdraw its warrant; (2) it may immediately revoke parole; and (3) it may withhold revocation until parolee has completed service of his intervening sentence and then revoke parole. *A. Shelton et al.* v. *United States Board of Parole et al.* (1967, 388 F. 2d 567, 128 U.S. App. D.C. 311).

The parole board is vested with broad discretion in the dispositional process. *Id.*

Prompt disposition of consequence of parole violation

Where fact of parole violation has been conclusively established by an adjudication, either state or federal, that a criminal offense was committed during release period, parole violator may apply to parole board for immediate determination of disposition to be made concerning consequences of his parole violation and to seek what is in effect concurrent service on all, or a part of, the unexpired portion of his original sentence with the sentence imposed for criminal offense which constituted the parole violation. *A. Shelton et al.* v. *United States Board of Parole et al.* (1967, 388 F. 2d 567, 128 U.S. App. D.C. 311).

Review

The parole board's selection of a particular disposition, after full and fair consideration of available facts, may be regarded as almost unreviewable, but failure to afford a procedure whereby violator may seek a favorable disposition, or an outright refusal to consider proffered evidence in mitigation, is not immune from judicial overview. *A. Shelton et al.*, v. *United States Board of Parole et al.* (1967, 388 F. 2d 567, 128 U.S. App. D.C. 311).

Where parole boards recently issued new regulations, in lieu of informal procedures, concerning the processing and disposition of applications for withdrawal or execution of parole violator warrants prior to expiration of the intervening sentence, appeals not otherwise disposed of would be remanded so that petitioners might pursue the administrative remedies provided in those regulations. *Id.*

Judicial review of dispositional phase of parole revocation proceedings is available, if at all, only after the violator has pursued his administrative remedies. *Id.*

Time limitation on issuance of violator warrant

The parole board's jurisdiction to issue a violator warrant with respect to a mandatory release terminates 180 days before expiration of the maximum sentence. *A. Shelton et al.* v. *United States Board of Parole et al.* (1967, 388 F. 2d 567, 128 U.S. App. D.C. 311).

§ 24–208. Power of Board—Prisoners sentenced to more than 180 days—Minimum sentence required to be served.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24–207.

§ 24–209. Federal Parole Board—Authority over United States prisoners convicted in the District of Columbia.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24–203, 24–207.

Chapter 3.—INSANE CRIMINALS

Sec.

24–301. Commitment of persons of unsound mind to the District of Columbia General Hospital—Certification to the court—Acquittal by jury on grounds of insanity—Confinement in a mental institution—Conditions for release after confinement — Conditional release — Expenses — Writ of habeas corpus—Inconsistent provisions of Federal Statutes superseded—Return order for apprehension of escaped inmates—Procedure and time limitation for pleading insanity as a defense.

§ 24–301. Commitment of persons of unsound mind to the District of Columbia General Hospital—Certification to the court—Acquittal by jury on grounds of insanity—Confinement in a mental institution—Conditions for release after confinement—Conditional release—Expenses—Writ of habeas corpus—Inconsistent provisions of Federal Statutes superseded—Return order for apprehension of escaped inmates—Procedure and time limitation for pleading insanity as a defense.

(a) If it appears to a court having jurisdiction of—

(1) a person arrested or indicted for, or charged by information with, an offense, or

(2) a child subject to a transfer motion in the Family Division of the Superior Court of the District of Columbia pursuant to section 16–2307,

that, from the court's own observations or from prima facie evidence submitted to it and prior to the imposition of sentence, the expiration of any period of probation, or the hearing on the transfer motion, as the case may be, such person or child (hereafter in this subsection and subsection (b) referred to as the "accused") is of unsound mind or is mentally

incompetent so as to be unable to understand the proceedings against him or properly to assist in his own defense, the court may order the accused committed to the District of Columbia General Hospital or other mental hospital designated by the court, for such reasonable period as the court may determine for examination and observation and for care and treatment if such is necessary by the psychiatric staff of said hospital. If, after such examination and observation, the superintendent of the hospital, in the case of a mental hospital, or the chief psychiatrist of the District of Columbia General Hospital, in the case of District of Columbia General Hospital, shall report that in his opinion the accused is of unsound mind or mentally incompetent, such report shall be sufficient to authorize the court to commit by order the accused to a hospital for the mentally ill unless the accused or the Government objects, in which event, the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial or to participate in transfer proceedings. If the court shall find the accused to be then of unsound mind or mentally incompetent to stand trial or to participate in transfer proceedings, the court shall order the accused confined to a hospital for the mentally ill.

(b) Whenever an accused person confined to a hospital for the mentally ill is restored to mental competency in the opinion of the superintendent of said hospital, the superintendent shall certify such fact to the clerk of the court in which the indictment, information, or charge against the accused is pending and such certification shall be sufficient to authorize the court to enter an order thereon adjudicating him to be competent to stand trial or to participate in transfer proceedings, unless the accused or the Government objects, in which event, the court, after hearing without a jury, shall make a judicial determination of the competency of the accused to stand trial or to participate in transfer proceedings.

(c) When any person tried upon an indictment or information for an offense, or tried in the juvenile court of the District of Columbia for an offense, is acquitted solely on the ground that he was insane at the time of its commission, that fact shall be set forth by the jury in their verdict.

(d)(1) If any person tried upon an indictment or information for an offense raises the defense of insanity and is acquitted solely on the ground that he was insane at the time of its commission, he shall be committed to a hospital for the mentally ill until such time as he is eligible for release pursuant to this subsection or subsection (e).

(2) A person confined pursuant to paragraph (1) shall have a hearing, unless waived, within 50 days of his confinement to determine whether he is entitled to release from custody. At the conclusion of the criminal action referred to in pargaraph (1) of this subsection, the court shall provide such person with representation by counsel—

(A) in the case of a person who is eligible to have counsel appointed by the court, by continuing any appointment of counsel made to represent such person in the prior criminal action or by appointing new counsel; or

(B) in the case of a person who is not eligible to have counsel appointed by the court, by assuring representation by retained counsel.

If the hearing is not waived, the court shall cause notice of the hearing to be served upon the person, his counsel, and the prosecuting attorney and hold the hearing. Within ten days from the date the hearing was begun, the court shall determine the issues and make findings of fact and conclusions of law with respect thereto. The person confined shall have the burden of proof. If the court finds by a preponderance of the evidence that the person confined is entitled to his release from custody, either conditional or unconditional, the court shall enter such order as may appear appropriate.

(3) An appeal may be taken from an order entered under paragraph (2) to the court having jurisdiction to review final judgments of the court entering the order.

(e) Where any person has been confined in a hospital for the mentally ill pursuant to subsection (d) of this section, and the superintendent of such hospital certifies (1) that such person has recovered his sanity, (2) that, in the opinion of the superintendent, such person will not in the reasonable future be dangerous to himself or others, and (3) in the opinion of the superintendent, the person is entitled to his unconditional release from the hospital, and such certificate is filed with the clerk of the court in which the person was tried, and a copy thereof served on the United States Attorney or the Corporation Counsel of the District of Columbia, whichever office prosecuted the accused, such certificate shall be sufficient to authorize the court to order the unconditional release of the person so confined from further hospitalization at the expiration of fifteen days from the time said certificate was filed and served as above; but the court in its discretion may, or upon objection of the United States or the District of Columbia shall, after due notice, hold a hearing at which evidence as to the mental condition of the person so confined may be submitted, including the testimony of one or more psychiatrists from said hospital. The court shall weigh the evidence and, if the court finds that such person has recovered his sanity and will not in the reasonable future be dangerous to himself or others, the court shall order such person unconditionally released from further confinement in said hospital. If the court does not so find, the court shall order such person returned to said hospital. Where, in the judgment of the superintendent of such hospital, a person confined under subsection (d) above is not in such condition as to warrant his unconditional release, but is in a condition to be conditionally released under supervision, and such certificate is filed and served as above provided, such certificate shall be sufficient to authorize the court to order the release of such person under such conditions as the court shall see fit at the expiration of fifteen days from the time such certificate is filed and served pursuant to this section: *Provided*, That the provisions as to hearing prior to unconditional release shall also apply to conditional releases, and, if, after a hearing and weighing the evidence, the court shall find that the condition of such person warrants his

conditional release, the court shall order his release under such conditions as the court shall see fit, or, if the court does not so find, the court shall order such person returned to such hospital.

(f) When an accused person shall be acquitted solely on the ground of insanity and ordered confined in a hospital for the mentally ill, such person and his estate shall be charged with the expense of his support in such hospital.

(g) Nothing herein contained shall preclude a person confined under the authority of this section from establishing his eligibility for release under the provisions of this section by a writ of habeas corpus.

(h) The provisions of this section shall supersede in the District of Columbia the provisions of any Federal statutes or parts thereof inconsistent with this section.

(i) When a person has been ordered confined in a hospital for the mentally ill pursuant to this section and has escaped from such hospital, the court which ordered confinement shall, upon request of the Government, order the return of the escaped person to such hospital. The return order shall be effective throughout the United States. Any Federal judicial officer within whose jurisdiction the escaped person shall be found shall, upon receipt of the return order issued by the committing court, cause such person to be apprehended and delivered up for return to such hospital.

(j) Insanity shall not be a defense in any criminal proceeding in the United States District Court for the District of Columbia or in the Superior Court of the District of Columbia, unless the accused or his attorney in such proceeding, at the time the accused enters his plea of not guilty or within fifteen days thereafter or at such later time as the court may for good cause permit, files with the court and serves upon the prosecuting attorney written notice of his intention to rely on such defense. No person accused of an offense shall be acquitted on the ground that he was insane at the time of its commission unless his insanity, regardless of who raises the issue, is affirmatively established by a preponderance of the evidence.

(k)(1) A person in custody or conditionally released from custody, pursuant to the provisions of this section, claiming the right to be released from custody, the right to any change in the conditions of his release, or other relief concerning his custody, may move the court having jurisdiction to order his release, to release him from custody, to change the conditions of his release, or to grant other relief.

(2) A motion for relief may be made at any time after a hearing has been held or waived pursuant to subsection (d)(2) of this section.

(3) Unless the motion and the files and records of the case conclusively show that the person is entitled to no relief, the court shall cause notice thereof to be served upon the prosecuting authority, grant a prompt hearing thereon, determine the issues, and make findings of fact and conclusions of law with respect thereto. On all issues raised by his motion, the person shall have the burden of proof. If the court finds by a preponderance of the evidence that the person is entitled to his release from custody, either conditional or unconditional, a change in the conditions of his release, or other relief, the court shall enter such order as may appear appropriate.

(4) A court may entertain and determine the motion without requiring the production of the persons at the hearing.

(5) A court shall not be required to entertain a second or successive motion for relief under this section more often than once every six months. A court for good cause shown may in its discretion entertain such a motion more often than once every six months.

(6) An appeal may be taken from an order entered under this section to the court having jurisdiction to review final judgments of the court entering the order.

(7) An application for habeas corpus on behalf of a person who is authorized to apply for relief by motion pursuant to this section shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court having jurisdiction to entertain a motion pursuant to this section, unless it also appears that the remedy by motion is inadequate or ineffective to test the validity of his detention. (Mar. 3, 1901, 31 Stat. 1340, ch. 854, 927; Apr. 14, 1906, 34 Stat. 113, ch. 1624; July 2, 1945, 59 Stat. 311, ch. 217; Aug. 9, 1955, 69 Stat. 609, ch. 673, § 1; Dec. 27, 1967, Pub. L. 90–226, § 201, title II, 81 Stat. 735; July 29, 1970, Pub. L. 91–358, title I, §§ 155(a), 159(e), title II, § 207, 84 Stat. 570, 577, 601.)

REFERENCE IN TEXT

The words "or tried in the juvenile court of the District of Columbia for an offense" in subsection (c) appear to be obsolete inview of the amendments made by Public Law 91–358, and more specifically the amendments made by section 111 (revision on title 11) and section 121 (revision of chapter 23 of title 16) which, in part, consolidated the juvenile court into the Superior Court of the District of Columbia (see § 11–901) and eliminated jury trials in juvenile cases (see § 16–2316).

AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358, amended subsection (j) by striking out "District of Columbia court of general sessions" and inserting in lien thereof "Superior Court of the District of Columbia".

Section 159(e) of Act July 29, 1970, Public Law 91–358 amended subsection (a) by striking out "juvenile Court" and inserting in lieu thereof "Family Division of the Superior Court."

Section 207 of Act July 29, 1970, Public Law 91–358 further amended section as follows:

(1) by striking out "(a) Whenever a person is arrested" and all that follows down through "is mentally incompetent" in the first sentence of subsection (a) and inserting in lieu thereof the following:

"(a) If it appears to a court having jurisdiction of—

"(1) a person arrested or indicted for, or charged by information with, an offense, or

"(2) a child subject to a transfer motion in the Family Division of the Superior Court of the District of Columbia pursuant to section 16–2307 of the District of Columbia Code.

that, from the court's own observations or from prima facie evidence submitted to it and prior to the imposition of sentence, the expiration of any period of probation, or the hearing on the transfer motion, as the case may be, such person or child (hereafter in this subsection and subsection (b) referred to as the 'accused') is of unsound mind or is mentally incompetent";

(2) by striking out the period at the end of the second sentence of subsection (a) and inserting in lieu thereof "or to participate in transfer proceedings.";

(3) by inserting after "stand trial" in the third sentence of subsection (a) "or to participate in transfer proceedings";

(4) by making the same insertions after "stand trial" in both places in subsection (b);

(5) by amending subsection (d) to read as above set out. For provisions of subsection (d), prior to this amendment see 1967 edition of the Code;

(6) by adding the last sentence to subsection (j); and

(7) by adding subsection (k) thereto.

1967—Section 201, Act Dec. 27, 1967, Pub. L. 90–226, amended section by adding subsections i and j.

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

SENTENCE FOR OFFENSES COMMITTED PRIOR TO DEC. 27, 1967

Section 1101, Act Dec. 27, 1967, Pub. L. 90–226, provided:

Whoever, prior to the date of enactment of this Act [Pub. L. 90–226] commits any act or engages in any conduct which constitutes an offense under provision of law amended by this Act, [Amendments of sections 4–140, 15–714, 15–716, 22–501, 22–703, 22–1513, 22–1801, 22–2001, 22–2901, 22–3105, 22–3201, 22–3202, 23–610, 23–901, 23–903, 24–301 and enactments of sections 4–140a, 4–150a and 22–1122, and amendments of 18 U.S.C. 4122, 5024 and 5025] shall be sentenced in accordance with the law in effect on the date he commits such acts or engages in such conduct.

SEPARABILITY OF PROVISIONS

Section 1102, Act Dec. 27, 1967, Pub. L. 90–226, provided:

If any provision of or any amendment made by this Act [Pub. L. 90–226; for provisions and amendments made by this Act, see enumeration in note above under heading, "Sentence for offenses committed prior to Dec. 27, 1967."] or the application thereof to any person or circumstance is held invalid, the other provisions of or other amendments made by this Act and the application of such provisions and amendments to other persons or circumstances shall not be affected thereby.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–2222, 16–2307, 24–303.

NOTES TO DECISIONS

Acquiescence in plea of insanity

Where petitioner had not himself sought introduction of insanity defense at his trial and had not acquiesced in assertion of that defense, his commitment to hospital for the mentally ill following his acquittal by reason of insanity was not authorized and he was entitled to habeas corpus. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

Administrative credit against sentence

Defendant, who pleaded guilty in 1964 to narcotics offense carrying mandatory minimum sentence, who, after arrest, was unable to make bail and was thus in jail when he moved for mental examination, and who was given administrative credit for time spent in jail prior to trial before and after commitment for examination, was also entitled to credit against sentence for time spent in hospital pursuant to order for examination, and credit was to be given administratively by Attorney General and not as exercise of sentencing court's discretion. *P. R. Sawyer* v. *R. Clark, Attorney General etc., et al.* (1967, 386 F. 2d 633, 128 U.S. App. D.C. 206).

Amnesia

Amnesia per se in case where recollection was present during time of alleged offenses and where defendant has ability to construct a knowledge of what happened from other sources, and where he has present ability to follow course of proceedings against him and discuss them rationally with his attorney does not constitute incompetency per se, and loss of memory should bar prosecution only when its presence would in fact be crucial to construction and presentation of defense and hence essential to fairness and accuracy of the proceedings. *United States* v. *R. Wilson* (1966, 263 F. Supp. 528).

Where defendant after crimes were committed was involved in automobile accident and suffered cerebral contusions and concussion which resulted in amnesia which prevented him from recollecting any events that took place on afternoon when crimes were committed, but who could construct a knowledge of what transpired from information given to him from other sources, and, except for such vacuity of memory, was perfectly able to follow course of proceedings against him and to discuss them with his attorney, was legally competent to stand trial. *Id.*

Bases of confinement

Confinement of the mentally ill rests upon basis substantially different from that which supports confinement of those convicted of crime since confinement of mentally ill depends not only upon validity of initial commitment but also upon continuing status of the patient. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

Burden of proof

Mental patient who seeks complete release from confinement by writ of habeas corpus need only establish, by the preponderance of the evidence, that he is no longer likely to injure himself or other persons because of mental illness. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

Since habeas corpus proceeding on petition of mental patient for complete release from confinement is not strictly adversary in nature, conventional rules regarding the burden of coming forward with evidence do not apply, and the hearing court and the parties bear equal responsibility to see that decision is had upon all the relevant evidence. *Id.*

Burden of proof, in habeas corpus proceeding by one committed to mental hospital after being found not guilty by reason of insanity, is the same as that for civilly committed patients. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Rule that habeas corpus petitioner must prove that his detention is illegal by preponderance of evidence applies in habeas corpus proceeding by one committed to mental hospital after being found not guilty of offense by reason of insanity, and thus court must find, by preponderance of evidence, that patient's commitment is no longer valid, that is, that he is no longer likely to injure himself or other persons due to illness. *Id.*

Burden of proof after commitment

One who seeks release, without statutory certification by superintendent of hospital, from commitment to hospital after being found not guilty of crime by reason of insanity must show that he has recovered his sanity and that such recovery has reached point where he has no abnormal mental condition which in reasonably foreseeable future would give rise to danger to patient or to public in event of his release. *United States* v. *M. Charnizon* (D.C. App. 1967, 232 A. 2d 586).

Where, at hearing to revoke patient's conditional release from state hospital following commitment after having been found not guilty of crime by reason of insanity, positive expert medical opinion was presented that patient had not recovered and would be danger to himself and others if released, order directing unconditional release of patient did not meet standards set forth by statute and thus, without certificate recommending either conditional or unconditional release and in absence of evidence on his behalf, patient was not entitled to be released. *Id.*

Burden of proof on petition for release

Petitioner seeking release from hospital by writ of habeas corpus after commitment pursuant to statute after being found not guilty of crime by reason of insanity has burden of showing his eligibility for relief and must establish freedom from such abnormal mental condition as would make individual dangerous to himself or community in reasonably foreseeable future. *L. W. Collins* v. *D. C. Cameron, Sup't etc.* (1967, 377 F. 2d 945, 126 U.S. App. D.C. 306).

Evidence that petitioner was suffering from mental illness of psychotic proportions and that petitioner was daily administered tranquilizing drug and that if medicine were discontinued petitioner would resort to alcohol supported finding that petitioner would be dangerous to himself or others if released. *Id.*

Commitment after acquittal by reason of insanity

Statute to effect that when, prior to imposition of sentence or prior to expiration of any period of probation, it shall appear to court that accused is of unsound mind or mentally incompetent so as to be unable to understand proceedings against him or to properly assist in his own defense, court may order accused committed for observation and treatment, if necessary, does not authorize commitment after verdict of not guilty by reason of insanity. *D. C. Cameron Sup't etc.* v. *C. Mullen etc.* (1967, 387 F. 2d 193, 128 U.S. App. D.C. 235).

Under statute to effect that when it appears to court that accused is of unsound mind or mentally incompetent so as to be unable to stand trial, court may confine him for observation and treatment, if necessary, and that, if hospital reports that person is of unsound mind or mentally incompetent, court may commit him to mental hospital unless he or government objects in which event court must hold hearing to determine competency of accused to stand trial, court is empowered to hold a hearing only to determine competency. *Id.*

Commitment procedure

Commission of criminal acts does not give rise to a presumption of dangerousness which, standing alone, justifies substantial difference in commitment procedures and confinement conditions for mentally ill, and that, while prior criminal conduct is relevant to the determination whether person is mentally ill or dangerous, it cannot justify denial of procedural safeguards for such determination, and that while prior criminal conduct is a relevant consideration, it does not provide automatic basis for allowing significant and arbitrary differences in such conditions where defendant is acquitted on his own plea of insanity. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

There is no reasonable basis for distinction for commitment purposes between those who plead insanity and those who have defense thrust upon them, and neither may be automatically deprived of type of protection afforded by 1964 Hospitalization of Mentally Ill Act. *Id.*

Fact that persons acquitted by reason of insanity have committed criminal acts and that such fact may tend to show they meet requirements for commitment does not remove such requirements nor justify total abandonment of procedures used in civil commitment proceedings to determine whether such requirements have been satisfied. *Id.*

Persons found not guilty by reason of insanity must be given judicial hearing with procedures substantially similar to those in civil commitment proceedings. *Id.*

Where feasible, requirements of Hospitalization of Mentally Ill Act as to notice, counsel, and jury trial should be followed in connection with judicial hearing afforded persons found not guilty by reason of insanity. *Id.*

Rule that persons found not guilty by reason of insanity must be given judicial hearing with procedures substantially similar to those in civil commitment proceedings is applicable prospectively only. *Id.*

Commitment without hearing

Commitment, without hearing, of one found not guilty by reason of insanity is permissible for period required to determine present mental condition. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Competence to stand trial

For purposes of determining one's competence to stand trial, that is, whether he is able to understand proceedings against him or properly assist in his defense, inquiry is focused on present mental condition, namely, at time of trial. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

For purposes of determining criminal responsibility, that is, whether act charged, if committed, was product of mental disease or defect, inquiry is focused on past mental condition, namely at time of offense. *Id.*

Competency examination

When a trial court has reasonable grounds to suspect a criminal defendant of being an addict, trial court should exercise his discretion and order competency examination of defendant. *T. Grennett* v. *United States* (1968, 403 F. 2d 928, 131 U.S. App. D.C. 203).

Competency hearing

Competency hearing must be of record and both parties must be given opportunity to examine all witnesses who testify or report on accused's competence. *T. E. Blunt* v. *United States* (1967, 389 F. 2d 545, 128 U.S. App. D.C. 375).

Judicial determination of competency must be an informed one. *Id.*

Careful evaluation of accused's condition is required of court during competency hearing. *Id.*

Where, in competency hearing, court blocked attempts to ask hospital's staff psychiatrist about basis for hospital superintendent's conclusion that accused was competent and foreclosed meaningful inquiry when counsel sought to identify area of differences between that conclusion and contrary conclusion of hospital's clinical psychologist, there was no possibility of full and scrupulous evaluation of defendant's competency, precluding informed judicial determination of competency. *Id.*

Where finding as to competency was based on hearing held almost 30 months before it was determined that there had not been a properly informed judicial determination, a new trial rather than remand for nunc pro tunc proceedings was required. *Id.*

Competency to stand trial

If accused is not presently insane or potentially dangerous to himself or others, it is illegal to commit him under statute providing that if court, after competency hearing, shall find accused to be then of unsound mind or mentally incompetent to stand trial, court shall order accused confined to hospital for mentally ill. *United States* v. *R. Wilson* (1966, 263 F. Supp. 528).

Consent of defense of insanity

Finding that petitioner himself sought introduction of insanity defense at his trial was clearly erroneous in view of evidence, including evidence, that new counsel retained by petitioner's mother did not confer with petitioner prior to filing motion for pretrial mental examination and that petitioner did not even know new counsel's identity when he saw him at hearing on the motion and thought that he was still being represented by assigned counsel. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

Finding that petitioner evidenced his acquiescence in insanity defense by waiting almost four years to attack validity of his mandatory commitment to hospital for the mentally ill was not warranted in light of petitioner's apparent disabilities, including his lack of financial means and learning in the law and the likelihood that he had been suffering from some mental illness. *Id.*

Construction

Mental hospital's examination of defendant properly extended to issues of mental responsibility even though, in terms, this section and order referred only to competency to stand trial. *United States* v. *W. E. Ashe* (1970, 427 F. 2d 626, — U.S. App. D.C. —).

Where an offense was committed less than one year before hearing on the government's motion for a mental examination and defendant had requested bifurcated trial and had filed notice of insanity defense, the court was justified in invoking provisions relating to mental examination of accused. *P. W. Marcey* v. *D. W. Harris* (1968, 400 F. 2d 772, 130 U.S. App. D.C. 301; remanding 287 F. Supp. 73)

Pretrial commitment pursuant to provisions relating to mental examination of accused is for purposes of pretrial mental examination and is not ground for denial of bail otherwise contemplated by Bail Reform Act. *Id.*

Purpose of statute providing for mandatory commitment of person acquitted on ground that he was insane at time of commission of offense and prescribing release standards was to achieve balance of interest between public and person charged with crime by insuring that in every case where person committed crime as result of mental disease or defect, such person should be given period of hospitalization to guard against imminent recurrence of some criminal act. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Purpose of subsection of District of Columbia Code prohibiting defense of insanity unless accused or his attorney files notice of intention to rely on such defense was to prevent defense being interposed unexpectedly

at trial when government was not prepared with evidence to meet it *P. W. Marcey* v. *D. W. Harris, Acting Superintendent, etc.* (1968, 287 F. Supp. 73; remanded 400 F. 2d 772).

District of Columbia Code section authorizing commitment to mental institution for mental examination as to defendants charged with criminal offenses should be broadly construed and it authorizes commitment for examination as to mental capacity to commit crime at time offense was committed. *Id.*

Only those hospitalized pursuant to Hospitalization of Mentally Ill Act are guaranteed by the act civil rights to dispose of property, execute instruments, make purchases, enter into contractual relationships, vote, or hold driver's license. *D. C. Cameron, Sup't etc.* v. *C. Mullen etc.* (1967, 387 F. 2d 193, 128 U.S. App. D.C. 235).

Statute to effect that when it appears to court that accused is of unsound mind or is mentally incompetent so as to be unable to understand proceedings against him court may order accused committed for observation and treatment if necessary did not authorize trial judge's affording hearing to determine for commitment purposes mental condition of accused found not guilty by reason of insanity, applying release standards of 1964 Hospitalization of the Mentally Ill Act or extending to accused rights which the 1964 Act guaranteed only to those civilly committed. *Id.*

Continuance for mental examination

Continuance should be allowed on clear showing of need for mental examination or for appointment of independent psychiatrist. *R. T. Brown* v. *United States* (D.C. App. 1968, 244 A. 2d 487).

Where defense counsel failed or refused to present to court factual basis for his conclusion that defendant possibly suffered from mental disease or defect at time of alleged crime, trial court's denial of request for continuance was not an abuse of discretion even if such request should have been treated as motion for mental examination and for appointment of independent expert. *Id.*

Court's findings

Court's findings concerning mental illness and dangerous propensities are not to be disturbed unless they lack support in record or rest on an erroneous legal principle. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

Effect of commitment

Commitment to St. Elizabeth's hospital does not automatically render person incompetent for most purposes. *D. C. Cameron, Sup't etc.* v. *C. Mullen etc.* (1967, 387 F. 2d 193, 128 U.S. App. D.C. 235).

Eligibility for release

To establish eligibility for release on habeas corpus, patient committed to mental hospital after being found not guilty of offense by reason of insanity must prove freedom from such abnormal mental condition as would make individual dangerous to himself or community in reasonably foreseeable future. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Patients committed to mental hospital after being found not guilty by reason of insanity may establish their eligibility for release by writ of habeas corpus. *Id.*

Evidence of competence at trial

Full and scrupulous attention must be given to any evidence concerning competency at trial, whether or not there has been a competency hearing. *T. E. Blunt* v. *United States* (1967, 389 F. 2d 545, 128 U.S. App. D.C. 375).

Evidence—Sufficiency

In this case in light of the evidence on issue of whether offense was product of mental illness, conviction for robbery of property belonging to United States, assault with a dangerous weapon and carrying dangerous weapon would be affirmed. *T. H. Adams* v. *United States* (1969, 413 F. 2d 411, 134 U.S. App. D.C. 137).

Exhaustion of administrative remedy

The administrative remedy for mental patient that must be exhausted prior to petition for habeas corpus is the medical examination, rather than request for examination, and if the examination has been conducted within six months prior to habeas corpus petition, the administrative remedy is exhausted. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

Only if the required medical examination is in progress when the mental patient's habeas corpus petition is filed has the patient failed to exhaust his administrative remedy to complete medical examination. *Id.*

If the mental hospital has ignored its duty to the patient in its care, its misconduct may not be imputed to the patient and thereby prejudice patient's right to judicial review of his custody. *Id.*

If a mental patient is undergoing medical examination at the time his petition for habeas corpus is filed, the district court should defer action on the petition pending mental hospital's completion of the examination and if, after completion, the patient desires to continue with his petition, the district court should proceed to determination of the issues. *Id.*

Habeas corpus

Petitioner involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity had right to treatment that was cognizable in habeas corpus, and law and justice required remand for hearing and findings on whether petitioner had received adequate treatment and, if not, the details and circumstances underlying the reason why he had not. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

Hearing and findings

Patient, who had been committed to hospital under statute after having been acquitted on criminal charge solely on ground that he was insane, who had received little or no treatment at hospital, and who brought habeas corpus proceeding in federal District Court, was entitled to hearing and findings as to whether he was receiving adequate treatment, and, if he was not, District Court could allow hospital reasonable opportunity to initiate treatment, and unconditional or conditional release might be in order if it should appear that opportunity for treatment had been exhausted or treatment was otherwise inappropriate. *W. G. Tribby* v. *D. Cameron, Superintendent etc.* (1967, 379 F. 2d 104, 126 U.S. App. D.C. 327).

Judicial determination by court

Federal district court which had been asked to reimpose complete restriction on patient who had been conditionally released from hospital to which he had been committed after being found not guilty of robbery by reason of insanity was required to make independent judicial determination. *F. W. Friend* v. *United States* (1967, 388 F. 2d 579, 128 U.S. App. D.C. 323).

Legally competent

Conceptual range of expression "legally incompetent" only embraces deficiencies in accused which actually prevents his fair trial, and mere deficiency, standing alone, is outside limits of the concept. *United States* v. *R. Wilson* (1966, 263 F. Supp. 528).

Mandamus

Without a full record of the trial even if petitioner was constitutionally entitled to further protection of his rights during hospital staff conference held in connection with a pre-indictment mental examination requested by petitioner, it could not be said that presence of petitioner's counsel, as opposed to some alternative device such as recording some or all parts of conference, was an appropriate remedy, so that mandamus to compel an order against hospital to permit presence of petitioner's counsel was not available. *R. N. Thornton* v. *Hon. H. F. Corcoran* (1969, 407 F. 2d 695, 132 U.S. App. D.C. 232).

Mandatory commitment

Mandatory commitment under statute providing that any person acquitted solely on ground that he was insane at time of commission of crime shall be confined in a hospital for the mentally ill is permissible only if defendant affirmatively relied on defense of insanity. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 387 F. 2d 241, 128 U.S. App. D.C. 283).

Under statute providing that any person acquitted solely on ground that he was insane at time of commission of crime shall be confined in hospital for mentally ill,

Congress did not intend to allow automatic commitment when the defense of insanity was thrust upon a defendant who objected to it. *Id.*

Mental examination before verdict

The decision to commit is a matter of discretion with the court and the exercise of that discretion will not lightly be disturbed.

The evidence did not show a need for a mental examination. *F. E. Wesley* v. *United States* (D.C. App. 1967, 233 A. 2d 514).

Mentally ill person

A person is "mentally ill" if he suffers from an abnormal condition of mind that substantially affects mental or emotional processes, and substantially impairs behavioral control. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

Periodic examinations

Statute governing release of persons acquitted by reason of insanity entitles patient to periodic examinations by hospital staff and right to be examined by outside psychiatrist and, if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Rule that patient committed to mental hospital after being found not guilty of offense by reason of insanity is entitled to periodic examinations by hospital staff and right to be examined by outside psychiatrist, and that if one of examining physicians believes he should no longer be hospitalized, he is entitled to court hearing applies to all cases including those previously committed under statute providing for mandatory commitment of persons acquitted by reason of insanity. *Id.*

Petition for release

When a mental hospital patient's habeas corpus petition for release from mental hospital is based on his mental health at time petition was filed, the petition is not subject to dismissal on grounds that the merits of his claim had been determined in prior proceedings or that failure to present the issues in prior proceedings amounted to inexcusable neglect. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

Since ten months had elapsed between denial of previous petition for habeas corpus and mental patient's subsequent petition, sufficient time had passed for patient to raise issue that his condition at time of petition warranted his release from confinement in mental institution. *Id.*

Policy of statute

Underlying policy of statute government commitment and release of persons found not guilty of crime by reason of insanity is to provide treatment and cure for individual in manner which affords reasonable assurance of public safety. *United States* v. *M. Charnizon* (D.C. App. 1967, 232 A. 2d 586).

Pretrial mental examination

Since the defendant who allegedly had history of drug addiction was opposed to pretrial motion for mental examination and, on interrogation by the court with questions designed to elicit degree of his understanding of his legal circumstances as well as his position on the motion, his responses to former were clear and his opposition to commitment was steadfast, the trial court did not err in denying motion. *United States* v. *M. W. Collins* (1970, 433 F. 2d 550, — U.S. App. D.C. —).

Although five months before trial it had been determined that defendant was suffering from drug addiction which was in remission, where defendant did not testify, there was no expert testimony as to any abnormal mental condition, defendant did not seek hearing and there was no evidence of long record of disturbed behavior, failure of trial judge sua sponte to grant hearing on issue of mental competence to stand trial was not basis for reversal. *R. R. Powell* v. *United States* (1966, 373 F. 2d 225, 125 U.S. App. D.C. 364).

There must be facts which create a substantial doubt of defendant's mental competence before due process requires the trial judge to order hearing thereon sua sponte. *Id.*

Proof of need for mental examination

Motion for mental examination is made on adequate averment, not on counsel's belief, however sincere, that certain undisclosed facts lead him, or a psychiatrist, or a social psychologist, to suspect examination is required. *R. T. Brown* v. *United States* (D.C. App. 1968, 244 A. 2d 487).

Counsel may in his motion for continuance offer to make ex parte proffer of facts showing need for mental examination and for appointment of independent psychiatrist. *Id.*

Where motion for continuance was supported by counsel's statement that certain undisclosed facts lead him to believe that defendant suffered from mental disease at time of trial but did not state facts on which such belief was based, denial of continuance did not deprive defendant of substantial rights or fair trial. *Id.*

Psychologist's qualifications

Court which rather than evaluating psychologist's qualifications in competency hearing turned hearing into inquiry into any psychologist's competency, without medical training, to make informed observations about accused was erroneous. *T. E. Blunt* v. *United States* (1967, 389 F. 2d 545, 128 U.S. App. D.C. 375).

Lack of general medical background may affect weight given to psychologist's testimony in incompetency hearing. *Id.*

Psychiatric assistance

As to assertion of a claim, on appeal from denial of habeas corpus relief, that the petitioner had not had such court-appointed psychiatric assistance to which interests of justice entitled him for the preparation and presentation of his habeas corpus case, the court would take judicial notice that over a dozen years or more the medical views of government psychiatrists, as a whole, generally turned out to be more favorable to defendants than to the prosecutors in verdicts of not guilty by reason of insanity. *A. Proctor* v. *D. W. Harris* (1969, 413 F. 2d 383, 134 U.S. App. D.C. 109).

The petitioner, who sought release from a mental hospital to which he was confined pursuant to commitment following a verdict of not guilty of criminal charges by reason of insanity, and on whose application an independent psychiatric examination was ordered, was granted full and meaningful habeas corpus hearing without being denied any relevant or other legitimate assistance from government employed psychiatrist and was not entitled to relief on the theory that he had not had court-appointed psychiatric assistance to which interests of justice entitled him for preparation and presentation of his habeas corpus case. *Id.*

Public policy

However strong and pervasive public policy to bring the morally responsible to bar, it cannot subvert constitutional right to fair trial which is not afforded to accused who is prosecuted while legally incompetent. *United States* v. *R. Wilson* (1966, 263 F. Supp. 528).

Purpose of detention

Purpose of detention under statute providing for commitment of person acquitted of crime by reason of insanity is not punitive but serves to protect the public and the subject and to afford place and procedure to treat and, if possible, to rehabilitate the subject. *L. W. Collins* v. *D. C. Cameron, Sup't etc.* (1967, 377 F. 2d 945, 126 U.S. App. D.C. 306).

Purpose of involuntary hospitalization

Purpose of involuntary hospitalization is treatment, not punishment. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

Questions of fact

The presence of an abnormal mental condition, and the extent to which it impairs mental or emotional processes and controls, are questions of fact; how substantial such an impairment must be to be considered a mental illness is a matter of law. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

The likelihood of future misconduct of the mental patient who seeks release from confinement, the type of misconduct to be expected, and its probable frequency

are questions of fact; whether the expected harm, and its apparent likelihood, are sufficiently great to warrant coercive intervention are questions of law. *Id.*

Reason for continued confinement

That person involuntarily committed and confined has some dangerous propensities does not, standing alone, warrant his continued confinement in a government mental institution; the dangerous propensities must be related to or arise out of an abnormal mental condition. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

Continued confinement of one involuntarily committed on being acquitted of an offense by reason of insanity depends not upon fact that he committed the acts, but upon his present mental condition. *Id.*

Reasonable opportunity to initiate treatment

If court finds that a mandatorily committed patient is in custody in violation of Constitution and laws, for failure to receive treatment, it may allow hospital a reasonable opportunity to initiate treatment, but if opportunity for treatment has been exhausted or is otherwise inappropriate, conditional or unconditional release may be in order. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

Release provisions

Release provisions of statute governing commitment to mental hospital of one found not guilty by reason of insanity are valid even though they differ from civil commitment procedures by authorizing court review of hospital's decision to release patient. *G. C. Bolton* v. *D. W. Harris, Acting Superintendent etc.* (1968, 395 F. 2d 642, 130 U.S. App. D.C. 1).

Equal protection is not offended by allowing government or court opportunity to insure that standards for release of civilly committed patients are faithfully applied to patients committed after having been found not guilty by reason of insanity. *Id.*

Resolution of reasonable doubt

Although patient committed to hospital after having been found not guilty of crime by reason of insanity may have improved materially and appears to be a good prospect for restoration as useful member of society, if abnormal mental condition renders him potentially dangerous, reasonable medical doubts or reasonable judicial doubts are to be resolved in favor of public and in favor of subject's safety. *United States* v. *M. Charnizon* (D.C. App. 1967, 232 A. 2d 586).

In ordering conditional release of patient committed to hospital after having been found not guilty of crime by reason of insanity, court must conclude that individual has recovered sufficiently so that under proposed conditions person will not in reasonable future be dangerous to himself or others. *Id.*

Review

Review of order revoking conditional release from hospital to which patient had been committed after being found not guilty of robbery by reason of insanity was not precluded by mootness on ground that another conditional release order had been issued, in view of fact that his complete hospital detentions would usually be for relatively brief time, not likely long enough to finish appellate review. *F. W. Friend* v. *United States* (1967, 388 F. 2d 579, 128 U.S. App. D.C. 323).

Revocation of conditional release

Noncompliance with conditions of release from hospital by patient who had been committed there after having been found not guilty of robbery by reason of insanity was significant but was not the sole or ultimate consideration in determining whether to revoke conditional release; findings as to his mental condition and dangerousness were required. *F. W. Friend* v. *United States* (1967, 388 F. 2d 579, 128 U.S. App. D.C. 323).

Right to treatment

One involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity has a right to treatment. *C. C. Rouse* v. *D. C. Cameron, Sup't etc.* (1967, 373 F. 2d 451, 125 U.S. App. D.C. 366).

On issue of right to treatment of one involuntarily committed on being acquitted of an offense by reason of insanity, hospital need not show that treatment will cure or improve him but only that there is bona fide effort to do so, and this requires hospital to show that initial and periodic inquiries are made into needs and conditions of patient with view to providing suitable treatment for him, and that the program provided is suited to his particular needs. *Id.*

On issue of right to treatment of one involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity, effort should be to provide treatment which is adequate in light of present knowledge. *Id.*

Continuing failure to provide suitable and adequate treatment of one involuntarily committed to mental hospital on being acquitted of an offense by reason of insanity cannot be justified by lack of staff or facilities. *Id.*

Scope of judicial review

When the mental patient is seeking complete release from confinement, the scope of judicial review of hospital administrator's decision is broader and the function of the hearing court is not simply to review the hospital's decision for unreasonableness, but rather itself to decide ultimate the question of whether the present status of the patient is such that continued confinement is justifiable. *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

Scope of mandatory commitment

Notwithstanding fact that appeal of denial of petition for writ of habeas corpus by person, who was acquitted by reason of insanity and summarily committed to mental hospital pursuant to mandatory provisions of District of Columbia statute raised substantial questions concerning scope of mandatory commitment and its relationship to the Hospitalization of the Mentally Ill Act, in view of petitioner's unconditional release from hospital while appeal was pending, appeal was dismissed as moot. *S. I. Solomon* v. *D. C. Cameron, Sup't etc.* (1967, 377 F. 2d 170, 126 U.S. App. D.C. 285).

Scope of review

That petitioner eloped from hospital, to which she had been committed, after district court had stayed its order of release in habeas corpus proceeding did not render moot government's appeal, inasmuch as district court had jurisdiction over petitioner at time of its order. *D. C. Cameron, Sup't etc.* v. *C. Mullen etc.* (1967, 387 F. 2d 193, 128 U.S. App. D.C. 235).

Appellate function of Court of Appeals was to act upon propriety of decision of district court issuing writ of habeas corpus and ordering release of petitioner committed to hospital, even though petitioner had eloped from hospital after district court had stayed its order of release. *Id.*

As long as there was outstanding an order of restraint on liberty of petitioner and as long as her custodians were within jurisdiction of Court of Appeals, habeas corpus case involving propriety of committing petitioner to hospital was not moot, and could not be dismissed on ground that petitioner who had eloped from hospital was not in custody for habeas corpus purposes. *Id.*

Sufficiency of return to petition for release

In this case, the court held that the mental hospital's return to habeas corpus petition filed by mental hospital was not sufficient to warrant trial court in denying plenary hearing on patient's mental condition at time of filing of petition *D. A. Dixon* v. *L. Jacobs, Sup't etc.* (1970, 427 F. 2d 589, — U.S. App. D.C. —).

Unconstitutional punishment

Defendant committed to hospital pursuant to statute after being found not guilty by reason of insanity on charge of second-degree murder who was not being detained solely for administration of tranquilizing drug which might have been administered outside hospital and who was receiving other forms of therapy was not being

unconstitutionally punished. *L. W. Collins* v. *D. C. Cameron, Sup't etc.* (1967, 377 F. 2d 945, 126 U.S. App. D.C. 306).

Waiver of competency hearing

Where conviction was reversed because of error relating to issue of insanity, although newly appointed counsel at second competency hearing agreed to finding of defendant's competency, in view of nature of testimony adduced at prior hearing, defendant's previous history with respect to competency to stand trial and insanity and fact that his counsel apparently did not have benefit of transcript of first hearing, a full hearing was required. *T. E. Blunt* v. *United States* (1967, 389 F. 2d 545, 128 U.S. App. D.C. 375).

Fact that neither defendant nor government objected at trial to court's acceptance of hospital certification of competency without holding a hearing could not be viewed as waiver by defendant of his rights, but it did authorize trial court in its discretion to proceed with trial without a competency hearing. *C. Heard, Jr.* v. *United States* (1967, 263 F. Supp. 613).

§ 24–302. Commitment of mentally ill person while serving sentence.

NOTES TO DECISIONS

Procedural safeguards

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act (now title 21, section 501 et seq., D.C. Code) providing full system of procedural safeguards before finding of mental illness can be made. *R. E. Mathews, Jr.* v. *K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

Under section 24–302 providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner may be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in title 21, section 501 et seq., and same procedures for release from hospital as are embodied in those sections. *Id.*

Validity of prison officials' policy

The simple fact that the prisoner was back in prison at time case was heard did not relieve court of obligation to appraise validity of prison officials' continuing policy of commitments without hearing to mental institutions, inasmuch as prisoner was still subject to that policy. *R. E. Mathews, Jr.* v. *K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

§ 24–303. Restoration to sanity—Delivery of person to court—Delivery of person to Director of Department of Corrections.

NOTES TO DECISIONS

Procedural safeguards

Transfer of prisoners to mental hospital requires protective procedures at least similar to those provided in 1964 Civil Commitment Act (now title 21, section 501 et seq., D.C. Code) providing full system of procedural safeguards before finding of mental illness can be made. *R. E. Mathews, Jr.* v. *K. L. Hardy et al.* (1969, 420 F. 2d 607, 137 U.S. App. D.C. 39).

Under section 24–302 providing that if director of department of corrections believes prisoner is mentally ill, he can refer prisoner to psychiatrist and, if psychiatrist concurs in that belief, director can then transfer prisoner to mental hospital, before prisoner may be involuntarily transferred he is entitled to judicial hearing, jury trial, and same rights of notice, counsel and cross-examination as are provided for in title 21, section 501 et seq., and same procedures for release from hospital as are embodied in those sections. *Id.*

Chapter 4.—PRISONS AND PRISONERS

SUBCHAPTER I.—PRISONS

§ 24–402. Sentence of prisoners to jail, reformatory, or penitentiary for more than one year—Jurisdiction of Commissioners over prisoners in reformatory—Transfer of prisoners from penitentiary to reformatory.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 24–403. Transfer of prisoners from jail to workhouse.

The United States District Court for the District of Columbia, Superior Court of the District of Columbia, the Attorney-General, and the superintendent of the Washington Asylum and Jail, when so requested by the Commissioners of the District of Columbia, shall deliver into the custody of the superintendent or the authorized deputy or deputies of said superintendent of the workhouse, male and female prisoners sentenced to confinement in said jail for offenses against the common law or against statutes or ordinances relating to the District of Columbia, and, in the discretion of the United States District Court for the District of Columbia, Superior Court of the District of Columbia, and the Attorney-General, male and female prisoners serving sentence in said jail for offenses against the United States, for such work or services as may be necessary, in the discretion of the commissioners of said District, in connection with the construction, maintenance, and operation of said workhouse, or the prosecution of any other public work at said institution or in the District of Columbia: *Provided,* That, on the direction of said commissioners, male and female prisoners confined in any existing workhouse existing on March 2, 1911, or in the Washington Asylum and Jail of the District of Columbia shall be delivered into the custody of said superintendent or the authorized deputy or deputies of said superintendent aforesaid, to perform similar work or services to those hereinbefore required of male and female prisoners serving sentences in the District of Columbia Jail: *Provided further,* That the Commissioners of the District of Columbia are hereby vested with jurisdiction over such male and female prisoners from the time they are so delivered into the custody of said superintendent or the duly authorized deputy or deputies of said superintendent, including the time when such prisoners are in transit between the District of Columbia and the site acquired for such workhouse, and during the period such prisoners are on such site or in the District of Columbia until they are released or discharged under due process of law. (Mar. 2, 1911, 36 Stat. 1002, ch. 192; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 171, 84 Stat. 590.)

AMENDMENT

1970—Section 171 of Act July 29, 1970, Public Law 91–358, amended section by inserting after "United States District Court for the District of Columbia" each time it appears ", Superior Court of the District of Columbia,".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 24–411. Superintendent and all other employees—Appointment—Discharge—Supervision of Board of Public Welfare.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 24–412. Employment of prisoners.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(211) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24–413, 24–421.

§ 24–413. Commitment by marshal.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24–414, 24–421.

§ 24–414. Delivery of prisoners to marshal.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24–421.

§ 24–415. Superintendent of Washington Asylum and Jail accountable for safe-keeping of prisoners.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24–413, 24–421.

§ 24–416. Annual report by Superintendent of Washington Asylum and Jail.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24–421.

§ 24–417. Superintendent required to execute judgments in capital cases—Failure of Congress to make specific appropriation not abolition of position or repeal of authority.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 24–418. Sale of products of workhouse and reformatory.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(212) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 24–418a. Sale of gun mountings to States of the Union and their political subdivisions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 24–420. Grounds of jail increased.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 24–425. Place of imprisonment—Designation by Attorney General—Transfer.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24–203, 24–207, 24–468, 24–506.

SUBCHAPTER II.—DEPARTMENT OF CORRECTIONS

§ 24–441. Department of Corrections created—Director.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 24–442. Powers of Department over institutions—Rules and regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(213) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to rules and regulations for the government of institutions, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 24–443. Board of Public Welfare powers transferred to Department—Officers and employees.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 24–444. Rules and regulations of Board of Public Welfare in effect.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 24–446. Cost of care and custody of persons confined in institutions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SUBCHAPTER III.—CORRECTIONAL INDUSTRIES FUND

§ 24–451. Establishment of fund.

CROSS REFERENCE

Applicability of U.S. Laws to District, see 18 U.S.C. 4122.
Rehabilitation of youth offenders in District, see 18 U.S.C. 5025.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24–455.

§ 24–452. Availability of fund for performance of services and production of commodities for rehabilitation of inmates—Accounting for the fund.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 24–453. Sale of products and services to District, Federal and State governments—Receipts from sales to be deposited in fund—Use of funds.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 24–454. Reports of financial condition and results of operations to be made by Director of the Department of Corrections to Commissioners—Disposition of realized profits—Net worth of fund not to be increased beyond $2,500,000—Payments to inmates and their dependents—Excess profits to be deposited to general funds of the district.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SUBCHAPTER IV.—WORK RELEASE PROGRAM

§ 24–464. Rules and regulations—Individual plans for each prisoner granted privilege.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(426) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, to the extent prescribed in par. 426, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 24–465. Punishment of prisoner for failure to comply with plan—Prosecution by Corporation Counsel.

* * * * *

(b) Any prisoner who willfully fails to return at the time and to the place of confinement designated in his work release plan shall be fined not more than $300 or imprisoned not more than ninety days, or both, such sentence of imprisonment to run consecutively with the remainder of previously imposed sentences. All prosecutions for violation of this subsection shall be in the Superior Court of the District of Columbia upon information filed by the Corporation Counsel of the District of Columbia or any of his assistants. (As amended, July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (b) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 24–466. Collection of earnings—Deposit in trust fund—Immunity from attachment—Disbursements—Payment of balance.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24–467.

§ 24–468. Authority of Attorney General to designate Commissioners to perform functions vested under section 24–425, for purposes of this subchapter.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 24–469. Authority of Commissioners under Reorganization Plan not affected—Delegation of functions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 5.—REHABILITATION OF ALCOHOLICS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 25–111a.

Sec.

24–501 to 24–513. Omitted.
24–514. Repealed.
24–521. Purpose.
24–522. Definitions.
24–523. Public health program for intoxicated persons and chronic alcoholics—Detoxification centers and other facilities—Delegation of functions by Commissioner.
24–524. Procedures for dealing with persons who are found intoxicated in public—Filing of criminal charges against chronic alcoholics—Dealing with intoxicated persons who violate certain laws—Records of detoxification center to be confidential.
24–525. Voluntary admission to inpatient centers—Medical officer in charge to determine who shall be admitted as a patient—Program for patients who are not chronic alcoholics—Involuntary detention not permitted, except by Court order.
24–526. Outpatient treatment of chronic alcoholics—Medical director to determine who shall be admitted for outpatient treatment—Care of chronic alcoholics for whom recovery is unlikely—Compulsory participation not permitted, except by Court order.
24–527. Commitment of chronic alcoholics by Court order for treatment—Hearing and findings required before commitment—Writ of habeas corpus—Right to counsel—Term of Commitment.
24–528. Applicability of chapter to chronic alcoholics who have not been determined to be mentally ill.
24–529. Commissioner may contract with appropriate public or private organizations to carry out purposes of this chapter.
24–530. Programs for the prevention and treatment of alcoholism and rehabilitation of alcoholics among District employees and in private industry.
24–531. Program for the prevention and treatment of alcoholism and rehabilitation of alcoholics in correctional institutions.
24–532. Program for the prevention of alcoholism and the treatment and rehabilitation of incipient alcoholics among juveniles and young adults.
24–533. Evaluation of programs for treatment of chronic alcoholics—Recommendations to Congress by Commissioner—Publication of data and statistics—Implementation of objectives of this chapter—Use of Federal funds, programs and facilities.
24–534. Liability for cost of treatment—Procedures for determining liability and ability to pay—Waiver of liability by Commissioner, in certain cases—Actions to recover cost of treatment—Deposit into United States Treasury of sums collected.

Sec.
24–535. Donations of services and gifts—Deposit of gifts in a trust fund account in the Treasury of the United States—Use of gifts, by Commissioner, to carry out purposes of this chapter.

§§ 24–501 to 24–513. Omitted.

These sections dealing with rehabilitation of alcoholics being sections 1 to 13 of the act of Aug. 4, 1947, 61 Stat. 744, ch. 742 are omitted for the reason that section 3(a) of the act of Aug. 3, 1968, Pub. L. 90–452, amended these sections by striking them out and inserting in lieu thereof new sections 1 to 15, classified herein as sections 24–521 to 24–535. For provisions of the omitted sections see the 1967 edition of the code. Section 14 of the act of Aug. 4, 1947 was renumbered as section 16 by section 3(b) of Pub. L. 90–452 and former section 15 was repealed by section 3(c) of the same act.

§ 24–514. Repealed. Aug. 3, 1968, Pub. L. 90–452, 82 Stat. § 3(c).

Section 15, act Aug. 4, 1947, 61 Stat. 747, ch. 472, dealt with the appointment of an advisory committee, by former District Commissioners.

EFFECTIVE DATE OF REPEAL

Section 4 of the act of Aug. 3, 1968, Pub. L. 90–452, provided: "The amendments made by section 3 of this Act [classified to sections 24–521 to 24–535, 25–111a and repealing this section] shall take effect on the ninetieth day following the date of its enactment." [Aug. 3, 1968.]

§ 24–521. Purpose.

The purpose of this chapter is to establish a comprehensive program in the District of Columbia for the prevention of alcoholism and the rehabilitation of alcoholics, discourage abuse of alcoholic beverages, and provide for medical, psychiatric, and other scientific treatment of chronic alcoholics; to minimize the deleterious effects of excessive drinking; to reduce the financial burden imposed upon the people of the District of Columbia by the abusive use of alcoholic beverages, as is reflected in accidents, inefficiency of personnel, and absenteeism; and to establish methods of handling intoxication and alcoholism that will benefit the individual involved and more fully protect the public. In order to accomplish this purpose and alleviate intoxication and chronic alcoholism, all public officials in the District of Columbia shall take cognizance of the fact that public intoxication shall be handled as a public health problem rather than as a criminal offense, and that a chronic alcoholic is a sick person who needs, is entitled to, and shall be provided appropriate medical, psychiatric, institutional, advisory, and rehabilitative treatment services of the highest caliber for his illness. (Aug. 4, 1947, 61 Stat. 744, ch. 472, § 1; Aug. 3, 1968, Pub. L. 90–452, § 3(a), 82 Stat. 618.)

AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, Pub. L. 90–452 amended the act of Aug. 4, 1947, by striking out sections 1 through 13 and inserting in place thereof new sections 1 to 15. The act of Aug. 4, 1947 contained 15 sections, the first thirteen of which were classified to sections 24–501 to 24–513, section 14 was classified to 25–111a, and section 15 to 24–514. Section 3(b) of the Pub. L. 90–452 amended former section 14 by striking out "Sec. 14" and inserted in lieu thereof "Sec. 16" and section 3(c) of the same public law repealed former section 15. Section 1 of the act of Aug. 4, 1947 as amended by Pub. L. 90–452, is set out above. Former section 1 classified to section 24–501 also stated the objectives but in substantially different language. For its provisions see section 24–501 in the 1967 edition of the code.

EFFECTIVE DATE OF AMENDMENT

Section 4 of act Aug. 3, 1968, Pub. L. 90–452, provided: "The amendments made by section 3 of this Act [classified to sections 24–521 to 24–535, 25–111a and repealing section 25–514] shall take effect on the ninetieth day following the date of its enactment." [Aug. 3, 1968.]

SHORT TITLE

Section 1, act Aug. 3, 1968, Pub. L. 90–452, provided: "That this Act [amending sections 4–143, 25–128, renumbering section 14 of the Act of Aug. 4, 1947, ch. 472, as section 16, classified as section 25–111a, repealing section 24–514, striking out sections 1 to 13 of the Act of Aug. 4, 1947 and inserting new sections 1 to 15, classified as sections 24–521 to 24–535] may be cited as the "District of Columbia Alcoholic Rehabilitation Act of 1967".

§ 24–522. Definitions.

For purposes of this chapter—

(1) The term "chronic alcoholic" means any person who chronically and habitually uses alcoholic beverages to the extent that (A) they injure his health or interfere with his social or economic functioning, or (B) he has lost the power of self-control with respect to the use of such beverages.

(2) The term "Court" means the Superior Court of the District of Columbia.

(3) The term "Commissioner" means the Commissioner of the District of Columbia. (Aug. 4, 1967, 61 Stat. 744, ch. 472, § 2; Aug. 3, 1968, Pub. L. 90–452, § 3(a), 82 Stat. 618; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended par. (2) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section as above set out. Former section 2 of the act of Aug. 4, 1947, was classified to section 24–502, set out in the 1967 edition of code and contained a substantially different definition of the term "chronic alcoholic." See amendment note under section 24–521.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATE OF 1968 AMENDMENT

See note under section 24–521.

§ 24–523. Public health program for intoxicated persons and chronic alcoholics—Detoxification centers and other facilities—Delegation of functions by Commissioner.

(a) The Commissioner shall establish and maintain an effective public health program in the District of Columbia to provide a continuum of appropriate services to intoxicated persons and chronic alcoholics. Such program shall coordinate all District of Columbia services for intoxicated persons and chronic alcoholics and shall include at least the following facilities which shall be available to both males and females:

(1) One or more detoxification centers, which shall be located within the District of Columbia, which shall have a total capacity of not more than 150 beds, and which shall provide appropriate medical services for intoxicated persons, including initial examination, diagnosis, and classification.

(2) An inpatient extended care facility which shall have a capacity of not more than 800 beds

and which shall provide intensive study, treatment, and rehabilitation of chronic alcoholics. Such facility shall not admit intoxicated persons.

(3) Outpatient aftercare facilities which may include clinics, social centers, vocational rehabilitation services, and supportive residential facilities and which shall have a total capacity of not more than 600 beds.

(b) The Commissioner may—

(1) establish or designate an agency of the District of Columbia government, and

(2) designate any officer or employee of the District of Columbia government,

to carry out any of his functions, powers, and duties under this chapter. (Aug. 4, 1947, 61 Stat. 744, ch. 472, § 3; Aug. 3, 1968, Pub. L. 90–452, § 3(a), 82 Stat. 619.)

AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 3, as above set out. Former section 3 of the act of Aug. 4, 1967 was classified to section 24–503, set out in the 1967 edition of the Code and contained provisions relating to the establishment and use of an alcoholic clinic. See amendment note under section 24–521.

EFFECTIVE DATE OF AMENDMENT

See note under section 24–521.

TRANSFER OF FUNCTIONS

For provisions regarding the duties of the Director of Public Health in relation to development of a program for the prevention etc.; of alcoholism, see Org. Ord. No. 141, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24–524, 24–525, 24–526.

§ 24–524. Procedures for dealing with persons who are found intoxicated in public—Filing of criminal charges against chronic alcoholics—Dealing with intoxicated persons who violate certain laws—Records of detoxification center to be confidential.

(a) Except as otherwise provided in subsection (b) of this section, any person who is intoxicated in public—

(1) may be taken or sent to his home or to a public or private health facility, or

(2) if not taken or sent to his home or such facility under paragraph (1), shall be taken to a detoxification center,

by the commissioner. Reasonable measures may be taken to ascertain that public transportation used for such purposes shall be paid for by such person in advance. Any intoxicated person may voluntarily come to a detoxification center for medical attention. The medical officer in charge of a detoxification center shall have the authority to determine whether a person shall be admitted to such center as a patient, or whether he should be referred to another health facility. The medical officer in charge of such center shall have the authority to require any person admitted as a patient under this subsection to remain at such center until he is sober and no longer incapacitated, but in any event no longer than 72 hours after his admission as a patient. If the medical officer concludes that such person should receive treatment at a different facility, he shall arrange for such treatment and for transportation to that facility. A detoxification center may provide medical services to a person who is not admitted as a patient. A patient in a detoxification center shall be encouraged to consent to an intensive diagnosis for alcoholism and to treatment at the inpatient and outpatient facilities authorized in section 24–523(a).

(b)(1) Any person who is taken into custody for violating section 25–128 shall be brought to a detoxification center where he shall either be admitted as a patient or transported by the Commissioner to another appropriate medical facility for treatment. The police officer who took such person into custody for violating such section shall leave a violation notice for such person with the medical officer in charge of the detoxification center. After such person is sober and no longer incapacitated, the medical officer in charge of the detoxification center shall detain him as long as is reasonably necessary to conduct a diagnosis for alcoholism. If such person is diagnosed as a chronic alcoholic the medical officer shall, after a review of such person's record, recommend to the Corporation Counsel whether a criminal charge should be filed against such person for violating such section in order to institute civil commitment proceedings under section 24–527. If such a criminal charge is not filed, no entry relating to such person's arrest for violating such section shall be made on any arrest or other criminal record. If the Corporation Counsel concludes that a criminal charge should be filed, the medical officer in charge of the detoxification center shall deliver to such person the violation notice that had been left with him. If such person is not diagnosed as a chronic alcoholic the medical officer in charge of the detoxification center shall deliver to him the violation notice that had been left with the medical officer and such person shall, after he is released by the center, be handled as in any other criminal case.

(2) Any person who is taken into custody in the District of Columbia for violating any criminal provision applicable in the District of Columbia (other than such section 25–128) and who appears to be intoxicated may be taken by the police to a detoxification center where he may be admitted as a patient for an immediate medical evaluation of his condition. As soon as it is determined that he is not in medical danger he shall be handled by the police as in any other criminal case. If his health is in danger, he may be detained either at the detoxification center or at some other appropriate medical facility until the danger has passed, and he shall then be handled as in any other criminal case. Such security conditions shall be maintained as are commensurate with the seriousness of the offense. In appropriate cases where there is no danger to the safety of any person, the police may leave with the medical officer in charge of the detoxification center a violation notice which shall be delivered to such person when he is released from the detoxification center.

(c) The registration and other records of a detoxification center shall remain confidential, and may be disclosed only to medical personnel for purposes of diagnosis, treatment, and court testimony, to police personnel for purposes of investigation of criminal offenses and complaints against police action, and to authorized personnel for purposes of presentence reports.

(d) The Commissioner shall promptly develop, in cooperation with the police, procedures for taking or sending an intoxicated person to a detoxification center, his residence, or a public or private health facility if no criminal charge is brought against such person. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 4; Aug. 3, 1968, Pub. L. 90–452, § 3(a), 82 Stat. 619.)

AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 4, as above set out. Former section 4 of the act of Aug. 4, 1967, was classified to section 24–504, set out in the 1967 edition of the code and contained provisions relating to suspension of criminal proceeding in the case of chronic alcoholics after hearing and commitment to the clinic. See amendment note under section 24–521.

EFFECTIVE DATE OF AMENDMENT

See note under section 24–521.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 4–143, 25–128.

§ 24–525. Voluntary admission to inpatient centers—Medical officer in charge to determine who shall be admitted as a patient—Program for patients who are not chronic alcoholics—Involuntary detention not permitted, except by Court order.

(a) Any person may voluntarily request admission to the inpatient center authorized in section 24–523(a), and no person committed under section 24–527 shall take precedence for purposes of admission over a person who voluntarily requests admission unless the person so committed is found by the Court to endanger the public safety. The medical officer in charge of the inpatient center is authorized to determine who shall be admitted as a patient. A complete medical, social, occupational, and family history shall be obtained as part of the diagnosis and classification at the inpatient center, and an effort shall also be made to obtain copies of all pertinent records from other agencies, institutions, and medical facilities in order to develop a complete and permanent history on each patient.

(b) A program shall be developed for patients of the inpatient center who are diagnosed not to be chronic alcoholics which program shall be designed to inform them of the dangers of alcoholism.

(c) In the case of a patient of the inpatient center who is diagnosed as a chronic alcoholic, he shall be given immediate, intensive treatment for chronic alcoholism at the inpatient center.

(d) No patient may be detained at the inpatient center without his consent, except under an order of the Court issued under section 24–527. Reasonable regulations for checking out of the inpatient center and for providing transportation may be adopted. If a patient checks out of the center against medical advice, he may be readmitted at the discretion of the medical officer in charge of the center. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 5, Aug. 3, 1968, Pub. L. 90–452, § 3(a), 82 Stat. 620.)

AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 5, as above set out. Former section 5 of the act of Aug. 4, 1947 was classified to section 24–505, set out in the 1967 edition of the code and contained provisions relating to establishment of a classification and diagnostic center and provisions for classification and diagnosis of persons committed to the clinic. See amendment note under section 24–521.

EFFECTIVE DATE OF AMENDMENT

See note under section 24–521.

§ 24–526. Outpatient treatment of chronic alcoholics—Medical director to determine who shall be admitted for outpatient treatment—Care of chronic alcoholics for whom recovery is unlikely—Compulsory participation not permitted, except by Court order.

(a) A chronic alcoholic shall be encouraged to consent to outpatient and aftercare treatment for his illness at the types of facilities authorized in section 24–523(a). Any person may voluntarily request admission to outpatient treatment. The medical officer in charge of the outpatient treatment is authorized to determine who shall be admitted to such treatment. There shall be one central outpatient treatment office which shall coordinate the operation of all outpatient facilities, and particularly shall be responsible for locating residential facilities for indigent intoxicated persons and alcoholics.

(b) For chronic alcoholics for whom recovery is unlikely, supporting services and residential facilities shall be provided.

(c) The Commissioner shall be responsible, through the outpatient treatment programs, for coordinating all public and private community efforts, including welfare services, vocational rehabilitation, and job placement, to integrate chronic alcoholics back into society as productive citizens.

(d) No person shall be required to participate in outpatient treatment without his consent unless required under an order of the Court issued under section 24–527. Reasonable requirements may be placed upon such a person as conditions for his participation in such treatment. If a patient withdraws from outpatient treatment against medical advice, he may be readmitted at the discretion of the medical officer in charge of outpatient treatment. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 6; Aug. 3, 1968, Pub. L. 90–452, § 3(a), 82 Stat. 621.)

AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 6, as above set out. Former section 6, of the act of Aug. 4, 1947 was classified to section 24–506, set out in the 1967 edition of the code and contained provisions relating to recommendations by the director to the committing judge for dealing with committed persons, issuance of orders by the court and providing for the designation by the Attorney General of the United States of the director as his authorized representative. See amendment note under section 24–521.

EFFECTIVE DATE OF AMENDMENT

See note under section 24–521.

§ 24–527. Commitment of chronic alcoholics by Court order for treatment—Hearing and findings required before commitment—Writ of habeas corpus—Right to counsel—Term of commitment.

(a) The Court may, on a petition of the Corporation Counsel on behalf of the Commissioner, filed and heard before the period of detention for detoxification and diagnosis expires, order a person to be committed to the custody of the Commissioner for inpatient treatment and care if (1) the Court determines that the person is a chronic alcoholic and that as a result of chronic or acute intoxication such person is in immediate danger of substantial physical harm, and (2) such person received notice of the filing of such petition within a reasonable time before the hearing held by the Court. The period of such commitment, computed from the date of admission to a detoxification center, shall not exceed

(1) 30 days in the case of the first or second such commitment within any 24-month period, or (2) 90 days in the case of the third or subsequent such commitment within any 24-month period.

(b) (1) The Court may, after making the findings prescribed in paragraph (2) of this subsection, commit to the custody of the Commissioner for treatment and care for up to a specified period of time a chronic alcoholic who—

(A) is charged with any misdemeanor and who, prior to trial for such misdemeanor, voluntarily requests such treatment in lieu of criminal prosecution for such misdemeanor;

(B) is charged with a violation of section 25–128 and is acquitted on the ground of chronic alcoholism; or

(C) is convicted of a violation of such section 25–128.

The term of commitment of a chronic alcoholic ordered by the Court under this subsection may not exceed the maximum term of imprisonment authorized for the misdemeanor for which the chronic alcoholic was charged.

(2) Before any person may be committed under this subsection, the Court shall, after a medical diagnosis and a civil hearing, find that—

(A) the person is a chronic alcoholic;

(B) adequate and appropriate treatment provided by the Commissioner is available for the person; and

(C) in the case of a person described in subparagraph (C) of paragraph (1) of this subsection, he constitutes a continuing danger to the safety of himself or of other persons.

The Court shall give reasonable notice of such hearing to the person sought to be committed and his attorney. In the case of a person described in subparagraph (C) of paragraph (1) of this subsection, if the Court does not make the finding described in subparagraph (B) of this paragraph, the Court may sentence the person to a penal institution pending the availability of such treatment, but for a period not to exceed the maximum term of imprisonment authorized for a violation of such section 25–128.

(c) A committed person may challenge by a petition for a writ of habeas corpus the applicability of such findings, except that no more than one such petition may be filed in any six-month period. The limitation prescribed in the preceding sentence shall not apply in the case of petitions based on newly discovered evidence.

(d) The Commissioner may transfer a committed person who has been adjudged a continuing danger to the safety of himself or of other persons from inpatient to outpatient status only with permission of the Court. The Commissioner may transfer any other committed person from inpatient to outpatient status, and any committed person from outpatient to inpatient status, without permission of the Court, but may not release a committed person without permission of the Court.

(e) If any person subject to a commitment proceeding initiated under this section does not have an attorney and cannot afford one, the Court shall appoint one to represent him. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 7; Aug. 3, 1968, Pub. L. 90–452, § 3(a), 82 Stat. 621.)

AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 7, as above set. Former section 7 of the act of Aug. 4, 1947 was classified to section 24–507, set out in the 1967 edition of the code and contained provisions relating to discharge of alcoholics at expiration of term of commitment and recommitment for further treatment after hearing on recommendation of the director. See amendment note under section 24–521.

EFFECTIVE DATE OF AMENDMENT

See note under section 24–521

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–2222, 24–524, 24–525, 24–526, 24–534.

§ 24–528. Applicability of chapter to chronic alcoholics who have not been determined to be mentally ill.

The provisions of this chapter shall apply to chronic alcoholics who have not been determined to be mentally ill. The handling of a chronic alcoholic who has been determined to be mentally ill shall be governed by the provisions of chapter 5 title 21. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 8; Aug. 3, 1968, Pub. L. 90–452, § 3(a), 82 Stat. 622.)

AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 8, as above set out. Former section 8 of the act of Aug. 4, 1947 was classified to section 24–508, set out in the 1967 edition of the code and contained provisions for supervision of the alcoholic permitted to remain at liberty or on conditional release. See amendment note under section 24–521.

EFFECTIVE DATE OF AMENDMENT

See note under section 24–521.

§ 24–529. Commissioner may contract with appropriate public or private organizations to carry out purposes of this chapter.

The Commissioner may contract with any appropriate public or private agency, organization, or institution that has proper and adequate treatment facilities, programs, and personnel, in order to carry out the purposes of this chapter. (Aug. 4, 1947, 61 Stat. 745, ch. 472, § 9; Aug. 3, 1968 Pub. L. 90–452. § 3(a), 82 Stat. 622.)

AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 9, as above set out. Former section 9 of the act of Aug. 4, 1947, was classified to section 24–509, set out in the 1967 edition of the code and provided for certification of the adequacy of the facilities, to the court by the Commissioners, prior to commitment therein of alcoholics. See amendment note under section 24–521.

EFFECTIVE DATE OF AMENDMENT

See note under section 24–521.

§ 24–530. Programs for the prevention and treatment of alcoholism and rehabilitation of alcoholics among District employees and in private industry.

(a) The Commissioner shall be responsible for developing and maintaining, in cooperation with other District of Columbia agencies and departments, programs for the prevention and treatment of alcoholism and the rehabilitation of alcoholics among District of Columbia employees consistent with the intent of this chapter.

(b) The Commissioner shall also be responsible for fostering alcoholism rehabilitation programs in private industry in the District of Columbia. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 10; Aug. 3, 1968, Pub. L. 90–452, § 3(a) 82 Stat. 622.)

AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 10, as above set out. Former section 10 of the act of Aug. 4, 1947, was classified to section 24–510, set out in the 1967 edition of the code and dealt with voluntary submissions for treatment, payment of costs, adoption of rules and regulations by Commissioners, nonforfeiture of rights of citizenship and confidentiality of records. See amendment note under section 24–521.

EFFECTIVE DATE OF AMENDMENT

See note under section 24–521.

§ 24–531. Program for the prevention and treatment of alcoholism and rehabilitation of alcoholics in correctional institutions.

The Commissioner shall be responsibile for establishing and maintaining a program for the prevention and treatment of alcoholism and the rehabilitation of alcoholics in correctional institutions in the District of Columbia. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 11; Aug. 3, 1968, Pub. L. 90–452, § 3(a), 82 Stat. 622.)

AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 11, as above set out. Former section 11, of the act of Aug. 4, 1947, was classified to section 24–511, set out in the 1967 edition of the code and contained provisions authorizing the Commissoners to contract with other agencies to provide facilities for treatment of alcoholics. See amendment note under section 24–521.

EFFECTIVE DATE OF AMENDMENT

See note under section 24–521.

§ 24–532. Program for the prevention of alcoholism and the treatment and rehabilitation of incipient alcoholics among juveniles and young adults.

The Commissioner shall be responsible for establishing and maintaining, in cooperation with the schools, the police, the courts, and other public agencies in the District of Columbia, an effective program for the prevention of intemperance and alcoholism, and the treatment and rehabilitation of incipient alcoholics, among juveniles and young adults. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 12; Aug. 3, 1968, Pub. L. 90–452, § 3(a), 82 Stat. 622.)

AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 12, as above set out. Former section 12, of the act of Aug. 4, 1947, was classified to section 24–512, set out in the 1967 edition of the code and contained provisions authorizing the Commissioners to appoint a director of the clinic and other personnel. See amendment note under section 24–521.

EFFECTIVE DATE OF AMENDMENT

See note under section 24–521.

§ 24–533. Evaluation of programs for treatment of chronic alcoholics—Recommendations to Congress by Commissioner—Publication of data and statistics—Implementation of objectives of this chapter—Use of Federal funds, programs and facilities.

(a) The Commissioner shall maintain a continuing evaluation of his programs and shall conduct pilot and demonstration projects to improve his programs, shall from time to time submit to the Congress such recommendations for programs for the District of Columbia to further the rehabilitation of chronic alcoholics, prevent the excessive and abusive use of alcoholic beverages, and promote moderation in the use of such beverages.

(b) The Commissioner shall prepare and publish materials, data, information, and statistics that relate to the problems of intoxication and alcoholism in the District of Columbia and that may be used in a program of public education directed toward the prevention of the excessive and abusive use of alcoholic beverages.

(c) The Commissioner shall develop a comprehensive plan to implement the objectives and policies of this chapter, and in so doing shall consult and collaborate with appropriate public and private agencies, institutions, and organizations in the District of Columbia, and with the Secretary of Health, Education, and Welfare. In developing such plan, the Commissioner shall make every effort to utilize funds, programs, and facilities authorized under Federal legislation. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 13; Aug. 3, 1968, Pub. L. 90–452, § 3(a), 82 Stat. 623.)

AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 13, as above set out. Former section 13, of the act of Aug. 4, 1947, was classified to section 24–513, set out in the 1967 edition of the code and provided that the director submit, from time to time, to the Commissioners, his recommendations for furthering the rehabilitation of chronic alcoholics and requiring him to gather and publish data in relation thereto. See amendment note under section 24–521.

EFFECTIVE DATE OF AMENDMENT

See note under section 24–521.

§ 24–534. Liability for cost of treatment—Procedures for determining liability and ability to pay—Waiver of liability, by Commissioner, in certain cases—Actions to recover cost of treatment—Deposit into United States Treasury of sums collected.

(a)(1) Except as otherwise provided in paragraph (2), if a person receives care, treatment, or any other services under this chapter—

(A) such person (or his estate), and

(B) such person's father, mother, spouse, or adult children,

shall be liable (each according to his ability, as determined by the Commissioner, and in the order listed above) to reimburse the District of Columbia, for all or such part of the actual cost of providing such services, as the Commissioner may require. The liability of any person described in subparagraph (B) of this paragraph shall be determined by the Commissioner after notice to such person that services have been or will be rendered under this chapter and the Commissioner has found that such person is able to reimburse the District of Columbia for all or a part of the cost of providing such services. Such person may not be held liable for the cost of any services rendered more than ninety days prior to the date of issue of such notice. The Commissioner shall determine the ability of the person who received services under this chapter (or his estate) or his father, mother, spouse, or adult children, as the case may be, to reimburse the District of Columbia, by an examination conducted under oath. In any one case the Commissioner may con-

duct as many examinations as he determines are necessary to ascertain the ability of such person (or his estate) or his relatives to so reimburse the District of Columbia. In the case of a person committed under section 24–527(a), the Commissioner may conduct such examination at any time after a petition for such person's commitment is filed under such section; and in the case of a person committed under section 24–527(b), such examination may be conducted by the Commissioner at any time after the court serves notice of the hearing to be conducted under paragraph (2) of such section. In all other cases the Commissioner may conduct an examination at any time.

(2) Any person described in subparagraph (B) of paragraph (1) who is liable to the District of Columbia under this section may apply to the Commissioner to have such liability waived. The Commissioner may waive such liability if he determines that it would be unreasonable to impose such liability because of the desertion or neglect of such person by the recipient of services under this chapter or because of other factors similarly affecting the relationship between such person and such recipient. The Commissioner shall prescribe procedures for the filing and hearing of such application under this paragraph.

(b) The Commissioner may bring an action against a person made liable under subsection (a) for all or any part of the cost of services provided under this chapter to require such person to satisfy such liability. In such an action the court may issue an order requiring any such person who is a party to such action to satisfy such liability in accordance with such terms as the court may prescribe. Such order may be enforced in the same manner as orders for alimony.

(c) Sums collected by the Commissioner under this section shall be deposited in the Treasury of the United States to the credit of the District of Columbia. (Aug. 4, 1947, ch. 472, § 14; Aug. 3, 1968, Pub. L. 90–452, § 3(a), 82 Stat. 623.)

AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 14, as above set out. Former section 14 of the act of Aug. 4, 1967, was classified to section 25–111a and has been renumbered as section 16 by section 3(b) of the act of Aug. 3, 1968. This former section 14, now section 16 dealt with appropriation of a portion of license fees derived from alcoholic beverages. See amendment note under section 24–521.

EFFECTIVE DATE OF AMENDMENT

See note under section 24–521.

§ 24–535. Donations of services and gifts—Deposit of gifts in a trust fund account in the Treasury of the United States—Use of gifts, by Commissioner, to carry out purposes of this chapter.

The Commissioner may accept on behalf of the District of Columbia donations of services or gifts of real or personal property, tangible or intangible, which are made for the purpose of carrying out his functions under this chapter. Gifts of money and the proceeds from the liquidation of any other gift shall be deposited in the Treasury of the United States to the credit of a trust fund account, which is hereby authorized, and may be invested and reinvested as trust funds of the District of Columbia. The Commissioner shall use such donations and gifts to carry out the purposes of this chapter. (Aug. 4, 1947, ch. 472, § 15; Aug. 3, 1968, Pub. L. 90–452, § 3(a), 82 Stat. 624.)

AMENDMENT

1968—Section 3(a) of the act of Aug. 3, 1968, inserted a new section 15, as above set out. Former section 15 of the act of Aug. 4, 1967, which was classified to section 24–514 was repealed by section 3(c) of the act of Aug. 3, 1968. This former section dealt with the appointment of an advisory committee by the commissioners. See amendment note under section 24–521.

EFFECTIVE DATE OF AMENDMENT

See note under section 24–521.

Chapter 6.—REHABILITATION OF USERS OF NARCOTICS

§ 24–601. Purpose.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–2222, 11–921, 24–602, 24–604, 24–607, 24–609 to 24–611, 24–614.

§ 24–602. Definitions.

For the purpose of sections 24–601 to 24–611—

(a) The term "drug user" means any person, including a person under eighteen years of age, notwithstanding the provisions of chapter 23 of title 16, who uses any habit-forming narcotic drugs so as to endanger the public morals, health, safety, or welfare, or who is so far addicted to the use of such habit-forming narcotic drugs as to have lost the power of self-control with reference to his addiction.

* * * * *

(As amended, July 29, 1970, Pub. L. 91–358, title I, § 170, 84 Stat. 590.)

REFERENCE IN TEXT

Section 4731 of the Internal Revenue Code of 1954, referred to in subsection (b), was repealed by section 1101(b)(3)(A) of Pub. L. 91–513, 84 Stat. 1292. For current definition of "narcotic drugs", see section 102(16) of the Controlled Substances Act, Pub. L. 91–513, 84 Stat. 1244 (21 U.S.C. 802(16)).

AMENDMENT

1970—Section 170 of Act July 29, 1970, Public Law 91–358 amended par. (a) by striking out "Juvenile Court Act of the District of Columbia, as amended" and inserting in lieu thereof "chapter 23 of title 16 of the District of Columbia Code".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–2222, 11–921, 24–601, 24–604, 24–607, 24–609 to 24–611, 24–614.

§ 24–603. Order of examination.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–2222, 11–921, 24–601, 24–602, 24–604, 24–605, 24–607, 24–609 to 24–611, 24–614.

§ 24–604. Right to counsel.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–2222, 11–921, 24–601, 24–602, 24–607, 24–609 to 24–611, 24–614.

§ 24–605. Examination by physicians.

* * * * *

(b) The United States Attorney for the District of Columbia shall review the facts and circumstances of each case submitted to him and present by petition those in which he feels justification exists in the public interest to the Superior Court of the District of Columbia for determination and disposition, or dismiss the patient from custody. A copy of such petition shall be served on the patient in open court, at which time the court shall set a hearing date and advise the patient of his right to counsel and his right to demand within five days a trial by jury. (As amended, July 29, 1970, Pub. L. 91–358, title I, § 155(c)(31), 84 Stat. 572.)

AMENDMENT

1970—Section 155(c)(31) of Act July 29, 1970, Public Law 91–358, amended subsec. (b) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–2222, 11–921, 24–601 to 24–604, 24–606, 24–607, 24–609 to 24–611, 24–614.

§ 24–606. When hearing is required.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–2222, 11–921, 24–601, 24–602, 24–604, 24–607, 24–609 to 24–611, 24–614.

§ 24–607. Hearing.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–2222, 11–921, 24–601, 24–602, 24–604, 24–609 to 24–611, 24–614.

§ 24–608. Confinement of patient.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–2222, 11–921, 24–601, 24–602, 24–604, 24–607, 24–609 to 24–611, 24–614.

§ 24–609. Release of patient.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–2222, 11–921, 24–601, 24–602, 24–604, 24–607, 24–608, 24–610, 24–611, 24–614.

§ 24–610. Periodic examination of released patients.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–2222, 11–921, 20–601, 24–602, 24–604, 24–607, 24–609, 24–611, 24–614.

§ 24–611. Patient not deemed a criminal.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–2222, 11–921, 24–601, 24–602, 24–604, 24–607, 24–609, 24–610, 24–614.

§ 24–613. Care and treatment of drug users—Authority of the Surgeon General.

CODIFICATION

Section is also classified to 42 U.S.C. § 257.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 24–615.

§ 24–614. Admittance into Public Health Service hospitals—Narcotics users from District of Columbia.

* * * * *

(b) Any person admitted to a hospital of the Service pursuant to subsection (a) shall be discharged therefrom (1) upon order of the Superior Court of the District of Columbia, or (2) when he is found by the Surgeon General to be cured and rehabilitated. When any such person is so discharged, the Surgeon General shall give notice thereof to the Superior Court of the District of Columbia and shall deliver such person to such court for such further action as such court may deem necessary and proper under the provisions of sections 24–601 to 24–611.

* * * * *

(As amended, July 29, 1970, Pub. L. 91–358, title I, § 155(c)(32), 84 Stat. 572.)

AMENDMENT

1970—Section 155(c)(32) of Act July 29, 1970, Public Law 91–358, amended subsec. (b) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24–613, 24–615.

§ 24–615. Release of patients.

CODIFICATION

Section is also classified to 42 U.S.C. § 261a.

Chapter 7.—INTERSTATE AGREEMENT ON DETAINERS

Sec.

24–701. Enactment of Interstate Agreement on Detainers on behalf of the United States and the District of Columbia.
24–702. Definitions.
24–703. Enforcement of Agreement—Cooperation with party States.
24–704. Regulations.
24–705. Congressional authority.

§ 24–701. Enactment of Interstate Agreement on Detainers on behalf of the United States and the District of Columbia.

The Interstate Agreement on Detainers is hereby enacted into law and entered into by the United States on its own behalf and on behalf of the District of Columbia with all jurisdictions legally join-

ing in substantially the form set forth below. (Dec. 9, 1970, Pub. L. 91–538, § 2, 84 Stat. 1397.)

"The contracting States solemnly agree that:

"ARTICLE I

"The party States find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party States and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainers based on untried indictments, informations, or complaints. The party States also find that proceedings with reference to such charges and detainers, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

"ARTICLE II

"As used in this agreement:

"(a) 'State' shall mean a State of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

"(b) 'Sending State' shall mean a State in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to article III hereof or at the time that a request for custody or availability is initiated pursuant to article IV hereof.

"(c) 'Receiving State' shall mean the State in which trial is to be had on an indictment, information, or complaint pursuant to article III or article IV hereof.

"ARTICLE III

"(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party State, and whenever during the continuance of the term of imprisonment there is pending in any other party State any untried indictment, information, or complaint on the basis of which a detainer has been lodged against the prisoner, he shall be brought to trial within one hundred and eighty days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint: *Provided,* That, for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the State parole agency relating to the prisoner.

"(b) The written notice and request for final disposition referred to in paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

"(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

"(d) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainers have been lodged against the prisoner from the State to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the State to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

"(e) Any request for final disposition made by a prisoner pursuant to paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of paragraph (d) hereof, and a waiver of extradition to the receiving State to serve any sentence there imposed upon him, after completion of his term of imprisonment in the sending State. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

"(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in paragraph (a) hereof shall void the request.

"ARTICLE IV

"(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party State made available in accordance with article V(a) hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the State in which the prisoner is incarcerated: *Provided,* That the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request: *And provided further,* That there shall be a period of thirty days after receipt by the appropriate authorities before the request be honored, within which period the Governor of the sending State may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

"(b) Upon request of the officer's written request as provided in paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the State parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving State who has lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

"(c) In respect of any proceeding made possible by this article, trial shall be commenced within one hundred and twenty days of the arrival of the prisoner in the receiving State, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

"(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executive authority of the sending State has not affirmatively consented to or ordered such delivery.

"(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to article V(e) hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

"ARTICLE V

"(a) In response to a request made under article III or article IV hereof, the appropriate authority in a sending State shall offer to deliver temporary custody of such prisoner to the appropriate authority in the State where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in article III of this agreement. In the case of a Federal prisoner, the appropriate authority in the receiving State shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in Federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

"(b) The officer or other representative of a State accepting an offer of temporary custody shall present the following upon demand:

"(1) Proper identification and evidence of his authority to act for the State into whose temporary custody this prisoner is to be given.

"(2) A duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

"(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in article III or article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

"(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

"(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending State.

"(f) During the continuance of temporary custody or while the prisoner is otherwise being made available for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

"(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending State and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

"(h) From the time that a party State receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending State, the State in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the States concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party State, or between a party State and its subdivisions, as to the payment of costs, or responsibilities therefor.

"ARTICLE VI

"(a) In determining the duration and expiration dates of the time periods provided in articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

"(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

"ARTICLE VII

"Each State party to this agreement shall designate an officer who, acting jointly with like officers of other party States, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the State, information necessary to the effective operation of this agreement.

"ARTICLE VIII

"This agreement shall enter into full force and effect as to a party State when such State has enacted the same into law. A State party to this agreement may withdraw herefrom by enacting a statute repealing the same. However, the withdrawal of any State shall not affect the status of any proceedings already initiated by inmates or by State officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

"ARTICLE IX

"This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party State or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any State party hereto, the agreement shall remain in full force and effect as to the remaining States and in full force and effect as to the State affected as to all severable matters."

CODIFICATION

The words "the form set forth below" are substituted for "the following form" in the interests of clarity.

EFFECTIVE DATE

Section 8 of act Dec. 9, 1970, Pub. L. 91–538, provided: "This Act [enacting this chapter] shall take effect on the ninetieth day after the date of its enactment."

SHORT TITLE

The first section of act Dec. 9, 1970, Pub. L. 91–538, provided: "this Act [enacting this chapter] may be cited as the 'Interstate Agreement on Detainers Act'."

§ 24–702. Definitions.

(a) The term "Governor" as used in the agreement on detainers shall mean with respect to the United States, the Attorney General, and with respect to the District of Columbia, the Commissioner of the District of Columbia.

(b) The term "appropriate court" as used in the agreement on detainers shall mean with respect to the United States, the courts of the United States, and with respect to the District of Columbia, the

courts of the District of Columbia, in which indictments, informations, or complaints, for which disposition is sought, are pending. (Dec. 9, 1970, Pub. L. 91–538, §§ 3, 4, 84 Stat. 1402.)

EFFECTIVE DATE

See note under § 24–701.

CROSS REFERENCE

For listing of courts of the District of Columbia, see § 11–101.

§ 24–703. Enforcement of Agreement—Cooperation with party States.

All courts, departments, agencies, officers, and employees of the United States and of the District of Columbia are hereby directed to enforce the agreement on detainers and to cooperate with one another and with all party States in enforcing the agreement and effectuating its purpose. (Dec. 9, 1970, Pub. L. 91–538, § 5, 84 Stat. 1402.)

EFFECTIVE DATE

See note under § 24–701.

CROSS REFERENCE

For listing of courts in which the judicial power in the District of Columbia is vested, see § 11–101.

§ 24–704. Regulations.

For the United States, the Attorney General, and for the District of Columbia, the Commissioner of the District of Columbia, shall establish such regulations, prescribe such forms, issue such instructions, and perform such other acts as he deems necessary for carrying out the provisions of this chapter. (Dec. 9, 1970, Pub. L. 91–538, § 6, 84 Stat. 1403.)

EFFECTIVE DATE

See note under § 24–701.

§ 24–705. Congressional authority.

The right to alter, amend, or repeal this chapter is expressly reserved. (Dec. 9, 1970, Pub. L. 91–538, § 7, 84 Stat. 1403.)

EFFECTIVE DATE

See note under § 24–701.

PART V

GENERAL STATUTES

TITLE 25—ALCOHOLIC BEVERAGES.
TITLE 26—BANKS AND OTHER FINANCIAL INSTITUTIONS.
TITLE 27—CEMETERIES AND CREMATORIES.
TITLE 28—COMMERCIAL INSTRUMENTS AND TRANSACTIONS.
TITLE 29—CORPORATIONS.
TITLE 30—DOMESTIC RELATIONS.
TITLE 31—EDUCATION AND CULTURAL INSTITUTIONS.
TITLE 32—ELEEMOSYNARY, CURATIVE, CORRECTIONAL, AND PENAL INSTITUTIONS.
TITLE 33—FOOD AND DRUGS.
TITLE 34—HOTELS AND LODGING-HOUSES.
TITLE 35—INSURANCE.
TITLE 36—LABOR.
TITLE 37—LIBRARIES.
TITLE 38—LIENS.
TITLE 39—MILITARY.
TITLE 40—MOTOR VEHICLES.
TITLE 41—PARTNERSHIPS.
TITLE 42—PERSONAL PROPERTY.
TITLE 43—PUBLIC UTILITIES.
TITLE 44—RAILROADS AND OTHER CARRIERS.
TITLE 45—REAL PROPERTY.
TITLE 46—SOCIAL SECURITY.
TITLE 47—TAXATION AND FISCAL AFFAIRS.
TITLE 48—TRADE-MARKS AND TRADE NAMES.
TITLE 49—COMPILATION AND CONSTRUCTION OF CODE.

TITLE 25.—ALCOHOLIC BEVERAGES

Chapter 1.—ALCOHOLIC BEVERAGE CONTROL

§ 25–103. Definitions.

In the interpretation of this chapter, unless the context indicates a different meaning:

* * * * *

(c) The word "wine" means the product of the normal alcoholic fermentation of the juice of fresh, sound, ripe grapes, with the usual cellar treatment and necessary additions to correct defects due to climatic, saccharine and seasonal conditions, including champagne, sparking, artificially carbonated and fortified wine. No other product obtained by the fermentation of the natural sugar contents of fruits or other agricultural products containing sugar shall be called "wine" unless designated by appropriate prefix descriptions of the fruit or other product from which the same was predominantly produced, or as artificial or imitation wine. Light wines shall mean wines containing 14 per centum or less of alcohol by volume.

* * * * *

(As amended Dec. 8, 1970, Pub. L. 91–535, § 1, 84 Stat. 1393.)

AMENDMENT

1970—Section 1 of act Dec. 8, 1970, Pub. L. 91–535, amended the last sentence of subsec. (c) by striking out ", other than champagne".

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Review

The question of an association's standing to obtain judicial review of a claim that Alcoholic Beverage Control Board improperly reissued retail liquor license depended primarily upon existence of logical and adequately direct nexus between association's interest and adverse action of opposing party or parties. *The Citizens Association of Georgetown* v. *J. E. Simonson et al.* (1968, 403 F. 2d 175, 131 U.S. App. D.C. 152).

In directing Alcoholic Beverage Control Board to consider wishes of persons residing or owning property in neighborhood in issuing licenses, Congress recognized that operation of liquor establishment may trouble its neighbors. *Id.*

Residents and owners of property within neighborhood of licensed establishment have required nexus to seek judicial review of reissuance of license. *Id.*

An association which was the authorized spokesman organized to promote interest of its individual members, many of whom resided or owned property within neighborhood of licensed liquor establishment, had standing to seek judicial review of reissuance of license. *Id.*

§ 25–104. Alcoholic Beverage Control Board—Appointment—Term—Employees.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 25–106. Jurisdiction of Board over licenses—Appeal from revocation—Duties.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(214) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section as provided in the last sentence of the section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

NOTES TO DECISIONS

Review—Judicial

Under this section and sec. 1–1510, the findings of the Alcoholic Beverage Control Board of District of Columbia can be overturned by District of Columbia Court of Appeals upon review only if they are without substantial evidence to support them. *Sophia's Inc.* v. *Alcoholic Beverage Control Board* (D.C. App. 1970, 268 A. 2d 799).

§ 25–107. Powers of Commissioners—Rules and regulations—Licenses.

* * * * *

The District of Columbia Council shall have authority to make rules and regulations for the issuance, transfer, and revocation of licenses; to facilitate and insure the collection of taxes; to govern the operation of the business of licensees, with full power and authority to prescribe the terms and conditions under which alcoholic beverages may be sold by each class of licensees; to forbid the issuance of licenses for manufacture, sale, or storage of alcoholic beverages in such localities in, and such sections and portions of, the District of Columbia as the Council may deem proper in the public interest; to limit the number of licenses of each class to be issued in the District of Columbia and to limit the number of licenses of each class in any locality in, or sections or portions of, the District of Columbia as the Council may deem proper in the public interest; to forbid the issuance of licenses for businesses conducted on such premises as the Council, in the public interest, may deem inappropriate; to forbid the issuance of any class or classes of licenses for businesses established subsequent to January 24, 1934 near or around schools, colleges, universities, churches, or public institutions; to prescribe the hours during which alcoholic beverages may be sold; and to prohibit the sale of any or all alcoholic beverages on such days as the Council determines necessary in the public interest. Notwithstanding any other provision of this chapter, the Commissioners shall not authorize the sale by any licensee, other than the holder of a retailer's license, class E, of any beverages on the day of the presidential election in the District of Columbia during the hours when the polls are open, and any such sales are hereby prohibited.

* * * * *

(As amended Aug. 2, 1968, Pub. L. 90–450, title IV, § 403, 82 Stat. 616; Sept. 22, 1970, Pub. L. 91–405, title II, § 204(f), 84 Stat. 853; Jan. 5, 1971, Pub. L. 91–650, title VII, § 706, 84 Stat. 1940.)

AMENDMENTS

1971—Section 706 of Act Jan. 5, 1971, Pub. L. 91–650, amended the second sentence in the second paragraph by striking out "any election" and inserting in lieu thereof "the presidential election".

1970—Section 204(f) of Act Sept. 22, 1970, Pub. L. 91–405, amended the second sentence in the second paragraph by striking out "the presidential election" and inserting in lieu thereof "any election".

1968—Section 403, Pub. L. 90–450, amended the first sentence of the second paragraph to read as above set out. The amendment transferred the authority to make rules and regulations to the District Council, eliminated the provisions relating to the sale of beverages on Sundays, and gave the Council the authority "to prohibit the sale of any or all alcoholic beverages on such days as the Council determines necessary in the public interest."

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment of section by Pub. L. 91–405, effective Sept. 22, 1970, see section 206(b) of Pub. L. 91–405, set out as a note to sec. 1–1101.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Aug. 2, 1968, Pub. L. 90–450, provided: That this act [Amending sections 25–107, 25–115(a), 47–1567b(a), 47–1571a, 47–1574b, 47–1586f(a)(4), 47–1589(b), 47–2501a, 47–2601, 47–2602, 47–2605, 47–2701, and 47–2702 and enacting sections 31–1118 and 47–145] may be cited as the "District of Columbia Revenue Act of 1968."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(215) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to prescribing, making, altering, and amending rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

NOTES TO DECISIONS

Authority of Alcoholic Beverage Control Board

Alcoholic Beverage Control Board has authority to limit number of Class "C" licenses notwithstanding that the action might unintentionally and incidentally limit given area to existing licenses so long as Board exercises bona fide judgment. *Palace Restaurant, Inc.* v. *Alcoholic Beverage Control Board* (D.C. App. 1970, 271 A. 2d 561).

§ 25–109. Sale without license prohibited—Exceptions.

NOTES TO DECISIONS

Consecutive sentences

Imposition of consecutive 120-day sentences for the keeping of whiskey for sale and selling of whiskey without a license was improper as constituting double punishment for a single offense where defendant had only a single bottle of whiskey which he illegally sold at time of his arrest and there was no proof of a keeping of the whiskey for sale independent of the sale itself. *W. Hicks* v. *District of Columbia* (D.C. App. 1967, 234 A. 2d 801).

Several offenses committed by single act

Usual test to determine if one or two offenses have been committed by a single act is whether each offense requires proof of an additional fact which the other does not. *W. Hicks* v. *District of Columbia* (D.C. App. 1967, 234 A. 2d 801).

§ 25–111. License classifications—Fees.

Licenses issued under authority of this chapter shall be of twelve kinds:

* * * * *

(g) *Retailer's license, class C.*—Such a license shall be issued only for a bona fide restaurant, hotel, or club, or a passenger-carrying marine vessel serving meals, or a club car or a dining car on a railroad. It shall authorize the holder thereof to keep for sale and to sell spirits, wine, and beer at the place therein described for consumption only in said place. Except in the case of clubs, hotels, and passenger-carrying marine vessels serving meals in interstate

commerce of one hundred miles or more, no beverage shall be sold or served to a customer in any closed container. In the case of passenger-carrying marine vessels and club cars or dining cars on a railroad, said spirits and wine, except light wines, shall be sold or served only to persons seated at public tables, and beer and light wine shall be sold and served only to persons seated at public tables or at bona fide lunch counters, except that spirits, wine, and beer may be sold or served to assemblages of more than six individuals in a private room when such room has been previously approved by the Board. In the case of restaurants and hotels, alcoholic beverages may be sold or served only to (1) persons seated at counters or tables, (2) persons in an enclosed or screened-off area set aside for the accommodation of persons waiting to be seated at tables, or (3) assemblages of more than six persons in a private room if such room has been previously approved by the Board. A restaurant operating on the premises of a theater, symphony hall, opera house, or other facility which has as its principal purpose the presentation of live drama, music, opera, or other performing arts, may sell and serve alcoholic beverages to seated or standing persons at locations within the facility approved by the Board. In the case of hotels, alcoholic beverages may also be sold and served in the private room of a registered guest. In the case of clubs, alcoholic beverages may be sold and served in any room or area available only to bona fide members of such club or their bona fide guests, or both. No license shall be issued to a club which has not been established for at least three months immediately prior to the making of the application for such license. All alcoholic beverages offered for sale or sold by the holder of such licenses may be displayed and dispensed in full sight of the purchaser.

The fee for such a license shall be for a restaurant, $825 per annum; for a hotel, under one hundred rooms, $825 per annum; for a hotel of one hundred or more rooms, $1,650 per annum; for a club, $425 per annum; for a marine vessel serving meals in interstate commerce of one hundred miles or more and for each railroad dining car or club car, $3 per month or $20 per annum: *Provided,* That such a license may be issued to any company engaged in interstate commerce covering all dining, club, and lounge cars operated by such company on railroads within the District of Columbia upon the payment of an annual fee of $100; for all other passenger-carrying marine vessels serving meals, $75 per month or $825 per annum.

* * * * *

(As amended Dec. 8, 1970, Pub. L. 91–535, § 2, 84 Stat. 1393.)

AMENDMENT

1970—Section 2 of act Dec. 8, 1970, Pub. L. 91–535, amended the fifth, sixth, seventh, and eighth sentences of subsec. (g) to read as above set out.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(216) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (c) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 25–107, 25–109, 25–111a, 25–115, 25–121, 25–128.

NOTES TO DECISIONS

Review

The question of an association's standing to obtain judicial review of a claim that Alcoholic Beverage Control Board improperly reissued retail liquor license depended primarily upon existence of logical and adequately direct nexus between association's interest and adverse action of opposing party or parties. *The Citizens Association of Georgetown* v. *J. E. Simonson et al.* (1968, 403 F. 2d 175, 131 U.S. App. D.C. 152).

In directing Alcoholic Beverage Control Board to consider wishes of persons residing or owning property in neighborhood in issuing licenses, Congress recognized that operation of liquor establishment may trouble its neighbors. *Id.*

Residents and owners of property within neighborhood of licensed establishment have required nexus to seek judicial review of reissuance of license. *Id.*

An association which was the authorized spokesman organized to promote interest of its individual members, many of whom resided or owned property within neighborhood of licensed liquor establishment, had standing to seek judicial review of reissuance of license. *Id.*

§ 25–111a. Appropriation of portion of license fees for rehabilitation of alcoholics.

Six per centum of the annual fees for licenses for the manufacture or sale of alcoholic beverages, except for retailer's license, class E, imposed by section 25–111, is hereby permanently appropriated to carry out the purposes of chapter 5 of Title 24. (Aug. 4, 1947, 61 Stat. 746, ch. 472, § 16; May 27, 1949, 63 Stat. 135, ch. 146, title V, § 504; Aug. 3, 1968, Pub. L. 90–452, § 3(b), 82 Stat. 624.)

AMENDMENT

1968—Section 3(b), act Aug. 3, 1968, Pub. L. 90–452, amended section by striking "sec. 14" and inserting in lieu thereof "sec. 16".

EFFECTIVE DATE OF AMENDMENT

Section 4 of the act of Aug. 3, 1968, Pub. L. 90–452. provided: "The amendments made by section 3 of this act [classified to sections 24–521 to 24–535, repealing section 24–514, and renumbering this section from 14 to 16] shall take effect on the ninetieth day following the date of its enactment." [Aug. 3, 1968.]

SHORT TITLE

Section 1, act Aug. 3, 1968, Pub. L. 90–452, provided: That this Act [amending sections 4–143, 25–128, renumbering section 14 of the Act of Aug. 4, 1947, ch. 472, as section 16, classified as section 25–111a, repealing section 24–514, striking out sections 1 to 13 of the Act of Aug. 4, 1947 and inserting new sections 1 to 15, classified as sections 24–521 to 24–535] may be cited as the "District of Columbia Alcoholic Rehabilitation Act of 1967".

§ 25–112. Authority of Commissioners to forbid transportation of liquor into District—Permit may be granted.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(217) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the

right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 25–114. Description in license of premises—Sale limited to premises—Storage not on premises—Expiration of licenses—Monthly licenses—Proportionate fees.

Every license shall particularly describe the place where the rights thereunder are to be exercised, and beverages shall not be manufactured or kept for sale or sold by any licensee except at the place so described in his license: *Provided, however,* That the holder of a manufacturer's or wholesaler's license, the holder of a retailer's license, class A, or the holder of a retailer's license, class C, and class D, issued for a passenger-carrying marine vessel or club car or a dining car on a railroad, may store beverages, with the consent of the Board, upon premises other than the premises designated in the license. Every annual license shall date from the 1st day of February in each year and expire on the 31st day of January next after its issuance, except as hereinafter provided. Licenses issued at any time after the beginning of the license year shall date from the first day of the month in which the license was issued and end on the last day of the license year above described, and payments shall be made of the proportionate amount of the annual license fee. Every monthly license shall date from the first day of the month in which it is issued and expire on the last day of the month named in the license. Monthly licenses shall not be issued for periods exceeding six months. (Jan. 24, 1934, 48 Stat. 327, ch. 4, § 13; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 8; Dec. 8, 1970, Pub. L. 91–535, § 5, 84 Stat. 1394.)

AMENDMENTS

1970—Section 5 of act Dec. 8, 1970, Pub. L. 91–535, amended the proviso in the first sentence by inserting ", the holder of a retailer's license, class A," immediately after "wholesaler's license", and by inserting a comma immediately before "may store beverages".

1935—Act Aug. 27, 1935, inserted "or the holder of a retailer's license, class C, and class D, issued for a passenger-carrying marine vessel or club car or a dining car on a railroad" in the proviso.

§ 25–115. Applications for licenses—Qualification of applicants—Moral character—Citizenship—Prior convictions—Ownership—Interest of manufacturer in retail business—Character of premises—Advertising application—Hearing of protests—Objection of property owners—Removal of bonded liquor from Government warehouses—Penalty.

(a) Any individual, partnership, or corporation desiring a license under this chapter shall file with the Board an application in such form as the Commissioners may prescribe, and such application shall contain such additional information as the Board may require, and (except in the case of an application for a manufacturer's license, retailers license, class E, or solicitor's license) shall contain a statement setting forth the name and address of the true and actual owner of the premises upon which the business to be licensed is to be conducted. Before a license is issued the Board shall satisfy itself:

1. That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or, if a corporation, each of its principal officers and directors, is of good moral character and generally fit for the trust to be in him reposed.

2. That the applicant, if an individual, or, if a partnership, each of the members of the partnership, or, if a corporation, each of its principal officers, is not less than twenty-one years of age, and has not, within five years prior to the filing of such application, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented, or, within ten years prior to such filing, been convicted of any felony.

3. That (A) each individual, each member of a partnership, and each principal officer of a corporation (other than a club) is a citizen of the United States, and (B) a majority of the principal officers of a club are citizens of the United States.

4. Except in the case of an application for a solicitor's license, that the applicant is the true and actual owner of the business for which the license is desired, and that he intends to carry on the business authorized by the license for himself and not as the agent of any individual, partnership, association, or corporation, and that he intends to superintend in person the management of the business licensed, or intends to have some other person, to be approved by the Board, manage the business for him, which said manager must possess all of the qualifications required of a licensee hereunder.

5. That in the case of an applicant for a wholesaler's license or a retailer's license (except a retailer's license class E), no manufacturer or wholesaler of beverages other than the applicant (including a stockholder holding 25 per centum or more of the common stock, or an officer of any manufacturer or wholesaler of beverages, if such manufacturer or wholesaler is a corporation), has such a substantial interest, direct or indirect, in the business for which the license is requested, or in the premises in respect of which such license is to be issued, as in the judgment of the Board may tend to influence such licensee to purchase beverages from such manufacturer or wholesaler, and that such business will not be conducted with any money, equipment, furniture, fixtures, or property rented from or loaned or given by any such manufacturer or wholesaler (including such stockholder or officer) or sold by such manufacturer or wholesaler (including such stockholder or officer) to any such licensee for less than the fair market value or upon a conditional sale agreement or chattel trust.

6. That the place for which the license is to be issued is an appropriate one considering the character of the premises, its surroundings, and the wishes of the persons residing or owning property in the neighborhood of the premises for which the license is desired.

* * * * *

(As amended, Aug. 2, 1968, Pub. L. 90–450, title IV, § 404, 82 Stat. 616.)

AMENDMENTS

1968—Section 404, Pub. L. 90–450, amended subsection (a) by: (a) striking out in paragraph 2 "a citizen of the United States," (b) adding immediately after paragraph 2 a new paragraph 3 as above set out, and (c) redesignating former paragraphs 3, 4, and 5, as paragraphs 4, 5 and 6.

SHORT TITLE

The enacting clause of act Aug. 2, 1968, Pub. L. 90–450, provided: That this Act [amending sections 25–107, 25–115(a), 47–1567b(a), 47–1571a, 47–1574b, 47–1586f(a)(4), 47–1589(b), 47–2501a, 47–2601, 47–2602, 47–2605, 47–2701, and 47–2702 and enacting sections 31–1118 and 47–145] may be cited as the "District of Columbia Revenue Act of 1968."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(218) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (c) relating to the promulgation of regulations to permit owners of warehouse receipts to withdraw bonded liquors, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

NOTES TO DECISIONS

Authority of Board

Alcoholic Beverage Control Board has authority to limit number of class "C" licenses notwithstanding that the action might unintentionally and incidentally limit given area to existing licenses so long as Board exercises bona fide judgment. *Palace Restaurant, Inc.* v. *Alcoholic Beverage Control Board* (D.C. App. 1970, 271 A. 2d 561).

Evidence—Sufficiency

In view of express wishes of neighborhood residents and property owners against granting of liquor license, the court held that the evidence supported the finding of Alcoholic Beverage Control Board that proposed restaurant which could accommodate up to 480 persons, which had indefinite arrangements for off-street parking and which would be located in area containing 6,000 existing liquor service seats was an inappropriate place for issuance of liquor license. *Sophia's Inc.* v. *Alcoholic Beverage Control Board* (D.C. App. 1970, 268 A. 2d 799).

In this case, the evidence supported finding of Alcoholic Beverage Control Board that granting of liquor license to sixty-one seat restaurant that was already in operation, that had lease not contingent upon granting of liquor license, that had provisions for parking and that was operated by owner of another successful restaurant was unlikely to contribute significantly to problems of area. *Citizens Association of Georgetown, Inc.* v. *Alcoholic Beverage Control Board* (D.C. App. 1970, 268 A. 2d 801).

Factors considered in grant of license

Since no notice was given that uniqueness of premises would be an issue of fact at hearing for determination of application for retailer's class "C" license by Alcoholic Beverage Control Board or that such criterion was to be applied to the application, denial of application could not stand and matter required remand for further proceedings. *Palace Restaurant, Inc.* v. *Alcoholic Beverage Control Board* (D.C. App. 1970, 271 A. 2d 561).

Review

The fact that Alcoholic Beverage Control Board granted a liquor license to a restaurant adjacent to location of much larger proposed restaurant did not render denial of a license to the latter arbitrary since qualifications of applicants and character of restaurants were different. *Sophia's Inc.* v. *Alcoholic Beverage Control Board* (D.C. App. 1970, 268 A. 2d 799).

The question of an association's standing to obtain judicial review of a claim that Alcoholic Beverage Control Board improperly reissued retail liquor license depended primarily upon existence of logical and adequately direct nexus between association's interest and adverse action of opposing party or parties. *The Citizens Association of Georgetown* v. *J. E. Simonson et al.* (1968, 403 F. 2d 175, 131 U.S. App. D.C. 152).

In directing Alcoholic Beverage Control Board to consider wishes of persons residing or owning property in neighborhood in issuing licenses, Congress recognized that operation of liquor establishment may trouble its neighbors. *Id.*

Residents and owners of property within neighborhood of licensed establishment have required nexus to seek judicial review of reissuance of license. *Id.*

An association which was the authorized spokesman organized to promote interest of its individual members, many of whom resided or owned property within neighborhood of licensed liquor establishment, had standing to seek judicial review of reissuance of license. *Id.*

§ 25–118. Revocation of license—Causes—Hearing—Discretionary closing for one year.

If during the period for which any license was issued the licensee shall be convicted of any felony, or if any licensee violates any of the provisions of this chapter or any of the rules or regulations promulgated pursuant thereto or fails to superintend in person, or through a manager approved by the Board, the business for which the license was issued, or allows the premises with respect to which the license of such licensee was issued, to be used for any unlawful, disorderly, or immoral purpose, or such licensee otherwise fails to carry out in good faith the provisions of this chapter, the license of said licensee may be revoked or suspended by the Board after the licensee has been given an opportunity to be heard in his defense, subject to review by the Commissioners in case of revocation or in case of suspension for a period of more than thirty days, as herein provided. In case a license issued hereunder shall be revoked or suspended, no part of the license fee shall be returned, and the Board may, in its discretion, subject to review by the Commissioners, as a part of the order of revocation provide that no license shall be granted for the same place for the period of one year next after such revocation, and in case such order shall be made no license shall, during said year, be issued for said place or to a person or persons whose license is so revoked for any other location.

In the event the Board at any time shall order the suspension of any license a notice may be posted by the Board, in a conspicuous place, on the outside of the licensed premises, at or near the main street entrance thereto; which notice shall state that the license theretofore issued to the licensee has been suspended and shall state the time for which said license is suspended, and state that the suspension is ordered because of a violation of this chapter, or of the Commissioners' regulations adopted under authority of this chapter. (Jan. 24, 1934, 48 Stat. 330, ch. 4, § 17; Aug. 27, 1935, 49 Stat. 900, ch. 756, § 9; Aug. 25, 1937, 50 Stat. 803, ch. 766, § 3; Apr. 26, 1950, 64 Stat. 88, ch. 106; Dec. 8, 1970, Pub. L. 91–535, § 3(a), 84 Stat. 1393.)

AMENDMENTS

1970—Section 3(a) of act Dec. 8, 1970, Pub. L. 91–535, amended the first sentence by striking out "or knowingly employs in the sale or distribution of beverages any person who has, within five years prior thereto, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented, or, within ten years prior thereto, been convicted of any felony,".

1950—Act Apr. 26, 1950, inserted the words "during the period for which any license was issued the licensee shall be convicted of any felony, or if" after the word "If" at the beginning of the first sentence of the first paragraph.

1937—Act Aug. 25, 1937, substituted "may" for "shall" in the second par.

1935—Act Aug. 27, 1935, added the words "or suspended" both times they appear and the words "in case of revocation or in case of suspension for a period of more than thirty days" in the first paragraph, and added the second paragraph.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Grounds for suspension

Fourteen-day suspension of liquor license was warranted where licensee permitted "B-girl" operation on its premises and female employee made solicitation for act of prostitution on premises. *Am-Chi Restaurant, Inc.* v. *J. R. Simonson et al., etc.* (1968, 396 F. 2d 686, 130 U.S. App. D.C. 37).

Mere fact that "B-girl" operation was not illegal per se on licensed premises was not defense by licensee in proceeding to suspend license on ground that female employee of licensee had made solicitation for prostitution on premises. *Id.*

Standards for suspension

Alcoholic Beverage Control Board should articulate its standards for suspension of liquor licenses in its order of suspension. *Am-Chi Restaurant Inc.* v. *J. R. Simonson et al., etc.* (1968, 396 F. 2d 686, 130 U.S. App. D.C. 37).

§ 25–119. Revocation of license when manufacturer interested—Manufacturer forbidden to loan money or furnish equipment for wholesaler or retailer—Extending credit permitted—"Manufacturer" defined.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 25–120. Revocation of license when wholesaler interested—Wholesaler forbidden to loan money or furnish equipment to retailer—Extending credit not prohibited—"Wholesaler" defined.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 25–123. Monthly reports of sales and purchases.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(219) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (c) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 25–124. Beverage taxes—Method of collection—Class C or D licensees—Reports.

(a) There shall be levied, collected, and paid on all of the following-named beverages manufactured by a holder of a manufacturer's license and on all of the said beverages imported or brought into the District by a holder of a wholesaler's license, except beverages as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beverages imported or brought into the District by a holder of a retailer's license, a tax at the following rates to be paid by the licensee in the manner hereinafter provided: (1) a tax of 15 cents on every wine-gallon of wine containing 14 per centum or less of alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (2) a tax of 33 cents on every wine-gallon of wine containing more than 14 per centum of alcohol by volume, other than champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (3) a tax of 45 cents on every wine-gallon of champagne, sparkling wine, and any wine artificially carbonated, and a proportionate tax at a like rate on all fractional parts of such gallon; (4) a tax of $2.00 on every wine-gallon of spirits and a proportionate tax at a like rate on all fractional parts of such gallon; (5) and a tax of $2.00 on every wine-gallon of alcohol and a proportionate tax at a like rate on all fractional parts of such gallon.

* * * * *

(c) Said taxes shall be collected and paid in the following manner:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the fifteenth day of each month, furnish to the Commissioners or their designated agent on a form to be prescribed by the Commissioners, a statement under oath showing the quantity of beverage subject to taxation hereunder sold by him during the preceding calendar month and shall, on or before the fifteenth day of each month, pay to the Commissioners or their designated agent the tax hereby imposed upon the quantity of beverages subject to taxation hereunder sold by him during the preceding calendar month.

* * * * *

(As amended Oct. 31, 1969, Pub. L. 91–106, title V, 501(a)(b), 83 Stat. 175.)

AMENDMENTS

1969—Act Oct. 31, 1969, Pub. L. 91–106, title V, § 501, amended subsection (a) clauses (4) and (5) by changing $1.75 to $2.00; amended subsection (c)(1) by striking "tenth" and inserting "fifteenth".

EFFECTIVE DATE OF 1969 AMENDMENTS; APPLICABILITY TO STOCK HELD PRIOR TO EFFECTIVE DATE; STATEMENTS; RECORDS OF INVENTORIES; PUNISHMENT FOR VIOLATIONS

"SEC. 502. (a) Except as otherwise provided in this title, (section 501 and this section of Pub. L. 91–106) the amendments made by section 501 (this section and 25–138) shall apply with respect to—

"(1) alcohol, spirits, and wines imported or brought into the District of Columbia or manufactured, and

"(2) beer sold or purchased for resale,

on and after the effective date of this title, which shall be the first day of the first month which begins on or after the thirtieth day after the date of the enactment of this Act. [Oct. 31, 1969]

"(b) In the case of alcohol, spirits, and beer which have been purchased prior to the effective date of this title and which on such date are held by a holder of a retailer's license, issued under the District of Columbia Alcoholic Beverage Control Act, such licensee shall pay to the Commissioner (in accordance with subsection (c)) an amount equal to the difference between the amount of tax imposed by such Act immediately prior to the effective date of this title on the amount of alcohol,

spirits, and beer so held by him, and the amount of tax which would be imposed by the District of Columbia Alcoholic Beverage Control Act on such effective date on an equivalent amount of alcohol, spirits, and beer.

"(c) Within twenty days after the effective date of this title, each such licensee (1) shall file with the Commissioner a sworn statement (on a form to be prescribed by the Commissioner) showing the quantity of alcohol, spirits, and beer held by him as of the beginning of the day on which this title becomes effective or, if such day is a Sunday, as of the beginning of the following day, and (2) shall pay to the Commissioner the amount specified in subsection (b).

"(d) Each such licensee shall keep and preserve for the twelve-month period immediately following the effective date of this title the inventories and other records made which form the basis for the information furnished to the Commissioner on the sworn statement required to be filed under this section.

"(e) For purposes of this section, alcohol, spirits, and beer shall be considered as held by a holder of a retailer's license if title thereto has passed to such holder (whether or not delivery to him has been made) and if title has not at any time been transferred to any person other than such holder.

"(f) A violation of the provisions of subsection (b), (c), or (d) of this section shall be punishable as provided in section 33 of the District of Columbia Alcoholic Beverage Control Act (D.C. Code, sec. 25–132)."

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of Act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this Act) may be cited as the 'District of Columbia Revenue Act of 1969'."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(220, 221 and 424) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (c)(3), (g) and section 1005 of the act of September 30, 1966, Pub. L. 98–610, set out as a note hereunder, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 25–123.

§ 25–125. Sale, distribution, furnishing of beverages by convicted persons and minors.

No licensee under this chapter shall allow any minor under the age of twenty-one years of age to sell, give, furnish, or distribute any beverage, except beer and light wines, or any minor under the age of eighteen years to sell, give, furnish, or distribute beer and light wines. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 25; Aug. 27, 1935, 49 Stat. 901, ch. 756, § 12; Dec. 8, 1970, Pub. L. 91–535, § 3(b), 84 Stat. 1393.)

AMENDMENTS

1970—Section 3(b) of act Dec. 8, 1970, Pub. L. 91–535, amended section by striking out "allow any person who has, within ten years prior thereto, been convicted of any felony, to sell, give, furnish, or distribute any beverage, nor".

1935—Act Aug. 27, 1935, deleted the words "within five years prior thereto, been convicted of a misdemeanor under the National Prohibition Act, as amended and supplemented or," which followed the words "convicted of," and added the words "and light wines" both times they now appear.

§ 25–126. Power of Board to compel testimony—Witness fees—Perjury.

Said Board is hereby authorized and empowered to summon any person before it to give testimony on oath or affirmation, or to produce all books, records, papers, documents, or other legal evidence as to any matter affecting the operation of this chapter and any member of said Board shall have the power to administer all oaths and affirmations for the purposes of the administration of this chapter. Such summons may be served within the District by any member of the Metropolitan police department. Without the District, but not more than twenty-five miles distant from the place of the hearing, such summons shall be served by a United States marshal or his deputy. If any witness having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then and in that event any member of the Board may report that fact to the Superior Court of the District of Columbia or one of the judges thereof and said court or any judge thereof hereby is empowered to compel obedience to said summons to the same extent as witnesses may be compelled to obey the subpenas of that court. Witnesses, other than those employed by the District of Columbia or the United States Government, summoned to appear before said Board shall be entitled to the same fees as are paid witnesses for attendance before the Superior Court of the District of Columbia, but said fees need not be paid said witnesses in advance of their appearing and testifying, or producing books, records, papers, documents, or other legal evidence before said board. Any person who shall wilfully swear falsely in any proceeding, matter, or hearing before said Board shall be deemed guilty of perjury. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 26; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(33), 84 Stat. 572; Dec. 8, 1970, Pub. L. 91–535, § 4, 84 Stat. 1393.)

CODIFICATION

Section 155(c)(33) of act July 29, 1970, Pub. L. 91–358, amended this section, effective Feb. 1, 1971, by striking out all references to the United States District Court for the District of Columbia and inserting in lieu thereof "Superior Court of the District of Columbia". Section 4 of act Dec. 8, 1970, Pub. L. 91–535, again amended this section by striking out references to the United States District Court for the District of Columbia and inserting in lieu thereof "District of Columbia Court of General Sessions". It would appear that as of Feb. 1, 1971, the proper reference is to the "Superior Court of the District of Columbia".

AMENDMENTS

1970—Section 4 of act Dec. 8, 1970, Pub. L. 91–535, amended section

(1) by inserting "within the District" immediately after "served" in the second sentence;

(2) by inserting immediately after such second sentence the following new sentence: "Without the District, but not more than twenty-five miles distant from the place of the hearing, such summons shall be served by a United States marshal or his deputy."; and

(3) by striking out "United States District Court for the District of Columbia" in the third and fourth sentences and inserting in lieu thereof "District of Columbia Court of General Sessions".

Section 155(c)(33) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

§ 25–128. Drinking of alcoholic beverage in street, alley, park, parking, or unlicensed public place forbidden—Intoxication in street, alley, park, or parking forbidden—Penalty.

(a) No person shall in the District of Columbia drink any alcoholic beverage in any street, alley, park, or parking; or in any vehicle in or upon the same; or in or upon any premises where food, nonalcoholic beverages, or entertainment are sold or provided for compensation not licensed under this chapter; or in any place to which the public is invited for which a license has not been issued hereunder permitting the sale and consumption of such alcoholic beverage upon such premises except premises licensed under section 25–111(*l*); or in any place to which the public is invited (for which a license under this chapter has been issued) at a time when the sale of such alcoholic beverages on the premises is prohibited by this chapter or by the regulations promulgated thereunder, or in any place for which a license under section 25–111(*l*) has been issued at a time when the consumption of such alcoholic beverages on the premises is prohibited by regulations promulgated under this chapter. No person in the District of Columbia, whether in or on public or private property, shall be intoxicated and endanger the safety of himself or of any other person or of property.

(b) Any person violating the provisions of subsection (a) of this section shall be punished by a fine of not more than $100 or by imprisonment for not more than ninety days, or both.

(c) Any person in the District of Columbia who is intoxicated in public and who is not conducting himself in such manner as to endanger the safety of himself or of any other person or of property, shall be dealt with in accordance with section 24–524. (Jan. 24, 1934, 48 Stat. 333, ch. 4, § 28; Aug. 27, 1935, 49 Stat. 901, 902, ch. 756, §§ 13, 14; June 29, 1953, 67 Stat. 104, ch. 159, § 404(h); Aug. 3, 1968, Pub. L. 90–452, § 2 (a), 82 Stat. 618.)

AMENDMENTS

1968—Section 2(a), act Aug. 3, 1968, Pub. L. 90–452, amended section as follows:

(1) Amended the second sentence of subsection (a) to read as above set out. This sentence prior to its amendment read: "No such person shall be drunk or intoxicated in any street, alley, park, or parking; or in any vehicle in or upon the same or in any place to which the public is invited, or at any public gathering and no person anywhere shall be drunk or intoxicated and disturb the peace of any person.",

(2) Struck out "this section" in subsection (b) and inserted in lieu thereof "subsection (a) of this section" and

(3) Added subsection (c).

SHORT TITLE

Section 1, act Aug. 3, 1968, Pub. L. 90–452, provided: That this Act (amending sections 4–143, 25–128, renumbering section 14 of the Act of Aug. 4, 1947, ch. 472, as section 16, classified as section 25–111a, repealing section 24–514, striking out sections 1 to 13 of the Act of Aug. 4, 1947 and inserting new sections 1 to 15, classified as sections 24–521 to 24–535.) may be cited as the "District of Columbia Alcoholic Rehabilitation Act of 1967".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24–524, 24–527.

NOTES TO DECISIONS

Evidence—Sufficiency

Evidence sustained conviction of assault, public intoxication and disorderly conduct in violation of District of Columbia Code. *W. M. Dempsey* v. *United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

Issue of fact

Whether a defendant, who was charged with assault, public intoxication and disorderly conduct in violation of District of Columbia Code, had mental disease which should have excused him from criminal responsibility was issue of ultimate fact for the trier thereof. *W. M. Dempsey* v. *United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

Weight of evidence

Weight to be given testimony of witnesses who related that the conduct of the defendant at time of alleged assault, public intoxication and disorderly conduct, in violation of District of Columbia Code, and shortly thereafter was bizarre and the weight to be given testimony of government witness who related that the defendant was intoxicated at the time of alleged offenses and that assault was triggered by refusal to serve him beer was for the trier of fact. *W. M. Dempsey* v. *United States and District of Columbia* (D.C. App. 1969, 251 A. 2d 650).

§ 25–129. Search warrants for illegal alcoholic beverages—Penalty for resisting officer—Disposition of illegal beverages—Payment of bona fide liens.

(a) A search warrant may be issued by any judge of the Superior Court of the District of Columbia or by a United States commissioner for the District of Columbia when any alcoholic beverages are manufactured for sale, kept for sale, sold, or consumed in violation of the provisions of this chapter, and any such alcoholic beverages and any other property designed for use in connection with such unlawful manufacture for sale, keeping for sale, selling, or consumption may be seized thereunder, and shall be subject to such disposition as the court may make thereof, and such alcoholic beverages may be taken on the warrant from any house or other place in which it is concealed.

* * * * *

(As amended, July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

REFERENCE IN TEXT

The Act of Oct. 17, 1968, Pub. L. 90–578, terminated the office of United States commissioner and established in place thereof the office of United States magistrate. The Act became operative in the District of Columbia on June 27, 1969, when two United States magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969. See §§ 401(a) and 402(a)(b) of said Act (28 U.S.C. 631 note).

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (a) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CROSS REFERENCE

Search warrants, generally, see §§ 23–521 to 23–525.

§ 25–131. Issuance of new permits under Beverage License Act of 1933 forbidden—Surrender of permit and refund of fees—Repeal.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 25–109.

§ 25–132. Penalty for violation where no specific penalty provided—Prosecutions.

Whosoever violates any of the provisions of this chapter for which no specific penalty is provided, or any of the rules and regulations promulgated pursuant thereto, shall be punished by a fine of not more than $1,000 or by imprisonment for not longer than one year or by both such fine and imprisonment in the discretion of the court.

Prosecutions for violations of this chapter shall be on information filed in the Superior Court of the District of Columbia by the corporation counsel or any of his assistants, except for such violations as are felonies, and prosecutions for such violations as are felonies, shall be by the United States Attorney in and for the District of Columbia or any of his assistants. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 33; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 25–108.

NOTES TO DECISIONS

Consecutive sentences

Imposition of consecutive 120-day sentences for the keeping of whiskey for sale and selling of whiskey without a license was improper as constituting double punishment for a single offense where defendant had only a single bottle of whiskey which he illegally sold at time of his arrest and there was no proof of keeping of the whiskey for sale independent of the sale itself. *W. Hicks* v. *District of Columbia* (D.C. App. 1967, 234 A. 2d 801).

Several offenses committed by single act

Usual test to determine if one or two offenses have been committed by a single act is whether each offense requires proof of an additional fact which the other does not. *W. Hicks* v. *District of Columbia* (D.C. App. 1967, 234 A. 2d 801).

§ 25–133. Sale by retailer of beverages on credit prohibited—Exceptions.

No holder of a retailer's license, except a retailer's license, class E, shall sell on credit any beverages except beer and light wines. For purposes of this section, the extension of credit by the holder of a class A retailer's license in connection with a sale by such license holder of any beverage through a credit card or other document or device intended or adapted for the purpose of establishing credit shall be considered a sale on credit of such beverage by such license holder. This section shall not prohibit a club from extending credit to its members or the guests of members or a hotel from extending credit to its registered guests. (Jan. 24, 1934, 48 Stat. 336, ch. 4, § 35; Dec. 8, 1970, Pub. L. 91–535, § 6, 84 Stat. 1394.)

AMENDMENT

1970—Section 6 of act Dec. 8, 1970, Pub. L. 91–535, amended section by inserting after the first sentence a new sentence to read as above set out.

§ 25–137. Unlawful transportation—Penalty.

* * * * *

(b) No public or common carrier shall transport or bring into the District of Columbia wine, spirits, or beer in a quantity in excess of one quart in any one calendar month for delivery to any one person in the District of Columbia other than the holder of a manufacturer's, wholesaler's, or retailer's license issued under this chapter.

* * * * *

(As amended Dec. 26, 1967, Pub. L. 90–223, § 1, 81 Stat. 728.)

AMENDMENT

1967—Section 1, Act Dec. 26, 1967, Pub. L. 90–223, amended subsection (b) by striking out "one gallon at any one time" and inserting in lieu "one quart in any one calendar month".

§ 25–138. Tax on beer.

(a) There shall be levied and collected by the District of Columbia on all beer sold by the holder of a manufacturer's or wholesaler's license, except such beer as may have been purchased from a licensee under this chapter, and except such beer as may be sold to a dealer licensed under the laws of any State or Territory of the United States and not licensed under this chapter, and on all beer purchased for resale by the holder of a retailer's license, except such beer as may have been purchased from a licensee under this chapter, a tax of $2.25 for every barrel containing not more than thirty-one gallons and at a like rate for any other quantity or for the fractional parts thereof. Unless the Commissioners shall by regulation prescribe otherwise, the collection and payment of such tax shall be in the manner following:

(1) Each holder of a manufacturer's or wholesaler's license shall, on or before the 15th day of each month, furnish to the assessor of the District of Columbia, on a form to be prescribed by the Commissioners, a statement under oath showing the quantity of beer subject to taxation hereunder sold by him during the preceding calendar month.

* * * * *

(As amended, Oct. 31, 1969, Pub. L. 91–106, title V, § 501(c), 83 Stat. 175.)

AMENDMENTS

1969—Act Oct. 31, 1969, Pub. L. 91–106. § 501(c) amended subsection (a) by striking out $2 and inserting $2.25; par. 1 of the same subsection was amended by striking "10th" and inserting "15th".

EFFECTIVE DATE OF 1969 AMENDMENTS ETC.

See note to section 25–124.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of Act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of Act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of title 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this Act) may be cited as the 'District of Columbia Revenue Act of 1969'."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(222) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section as to prescribing the manner of collection and payment of tax on beer, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 25–139. Building or place of violation declared a nuisance—Procedure to enjoin or abate.

* * * * *

(b) An action to enjoin any nuisance defined in subsection (a) of this section may be brought in the name of the District of Columbia by the corporation counsel of the District of Columbia or any of his assistants, in the civil branch of the Superior Court of the District of Columbia against any person conducting or maintaining such nuisance or knowlingly permitting such nuisance to be conducted or maintained. The rules of the Superior Court of the District of Columbia relating to the granting of an injunction or restraining order shall be applicable with respect to actions brought under this subsection, except that the District as complaining party shall not be required to furnish bond or security. It shall not be necessary for the court to find the building, ground, premises, or place was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the complaint are true, the court shall enter an order restraining the defendant from manufacturing, selling, keeping for sale, or permitting to be consumed any alcoholic beverage in violation of this chapter. When an injunction, either temporary or permanent, has been granted it shall be binding on the defendant throughout the District of Columbia. Upon final judgment of the court ordering such nuisance to be abated, the court may order that the defendant, or any one claiming under him, shall not occupy or use, for a period of one year thereafter, the building, ground, premises, or place upon which the nuisance existed, but the court may, in its discretion, permit the defendant to occupy or use the said building, ground, premises, or place, if the defendant shall give bond with sufficient security to be approved by the court, in the penal and liquidated sum of not less than $500 nor more than $1,000, payable to the District of Columbia, and conditioned that intoxicating beverages will not thereafter be manufactured, sold, kept for sale, or permitted to be consumed in or upon the building, grounds, premises, or place in violation of this chapter.

* * * * *

(As amended, July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (b) by striking out "District of Columbia Court of General Sessions" and "Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TITLE 26.—BANKS AND OTHER FINANCIAL INSTITUTIONS

Chapter 1.—BANKING INSTITUTIONS IN GENERAL

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 29–843.

§ 26–101. Banking institutions to be under supervision of Comptroller of Currency—Sections 161, 163, and 164 of title 12, U.S. Code, applicable.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–102, 26–104, 29–105.

§ 26–104. Liability of stockholders of bank or savings company—"Entered into or incurred" defined—Certain provisions of U.S. Code extended to District of Columbia.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 26–105.

Chapter 3.—TRUST, LOAN, MORTGAGE, SAFE DEPOSIT AND TITLE CORPORATIONS

§ 26–301. Purposes for which formed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–304, 26–309, 26–310, 26–313.

§ 26–302. Title insurance companies may become perpetual.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29–101, 29–209, 29–211, 29–215, 29–223, 29–229, 29–233, 29–234, 29–236, 29–238 to 29–240.

§ 26–305. Commissioners of the District may grant or refuse charter.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(213) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 26–313. Existing companies.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–307, 26–322.

§ 26–316. Capital stock—Deposit with comptroller required.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 26–317.

§ 26–317. Shares, par value—Calls—Sale of stock upon failure to pay call.

NOTES TO DECISIONS

Late payment for subscribed stock

Where stock subscription had been accepted by organizers of national bank prior to bank's actual existence and after bank came into being it notified subscriber that payment for his shares was due on or before certain date, buyer who mailed check which was not received by bank until day after specified date forfeited his rights under subscription agreement. *S. J. Brown* v. *United Community National Bank* (1968, 282 F. Supp 781).

§ 26–318. Annual reports to comptroller.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 26–319.

§ 26–322. Liability of stockholders.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 26–105.

§ 26–323. Stock to be paid up in money only—Exception—Companies doing business prior to January 1, 1902.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–313, 26–316.

§ 26–327. Directors or trustees liable for debts if dividends are declared whereby corporation is rendered insolvent or debt is created thereby.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 26–328.

§ 26–334. Bond as fiduciary may be required—Examination for cause.

The court having probate jurisdiction, or any judge thereof, shall have power to make orders respecting such company whenever it shall have been appointed trustee, guardian, receiver, executor, administrator with or without the will annexed, collector, committee of the estate of a lunatic, idiot, or any other fiduciary, and require the said company to render all accounts which might lawfully be made or required by any court or any judge thereof if such trustee, guardian, receiver, executor, administrator with or without the will annexed, collector, committee of the estate of a lunatic or idiot, or fiduciary were a natural person. And said court, or any judge thereof, at any time, on application of any person interested, may appoint some suitable person to examine into the affairs and standing of such companies, who shall make a full report thereof to the court, and said court, or any judge thereof, may at any time, in its discretion, require of said company a bond with sureties or other security for the faithful performance of its obligations, and such sureties or other security shall be liable to the same extent and in the same manner as if given or pledged by a natural person. (Mar. 3, 1901, 31 Stat. 1309, ch. 854, § 746; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–384, title I, § 155(c)(4), 84 Stat. 576.)

AMENDMENT

1970—Section 158(c)(4) of Act July 29, 1970, Public Law 91–358 amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 4.—BUILDING ASSOCIATIONS

§ 26–401. Organization—Certificate—Created body politic and corporate—Powers.

PROVISIONS OF HOME OWNERS' LOAN ACT 1933 RELATING TO BUILDING ASSOCIATIONS AND SIMILAR INSTITUTIONS IN THE DISTRICT OF COLUMBIA

Section 8 of the above Act [as added Dec. 31, 1970, Pub. L. 91–609, 84 Stat. 1815; 12 U.S.C. 1466a] provided:

(a) Without regard to any provision of law other than this section, and without limitation on any other power or function now or hereafter vested in or exercisable by the Federal Home Loan Bank Board by or under this Act [Home Owners' Loan Act of 1933; 12 U.S.C. 1461 et seq.] or otherwise, the Board shall, with respect to all incorporated or unincorporated building, building or loan, building and loan, or homestead associations, and similar institutions, of or transacting or doing business in the District of Columbia, or maintaining any office in the District of Columbia (other than Federal savings and loan associations), have the same powers and functions as to examination, operation, and regulation as are now or hereafter vested in or exercisable by it with respect to Federal savings and loan associations by or under section 5 of this Act [12 U.S.C. 1464] or otherwise, and all of the provisions of subsection (d) of section 5 of this Act [12 U.S.C. 1464(d)] as now or hereafter in force shall be applicable with respect to such associations or institutions.

(b) Any such association or institution incorporated under the laws of, or organized in, the District of Columbia shall have in addition to any existing statutory authority such statutory authority as is from time to time vested in Federal savings and loan associations.

(c) Charters, certificates of incorporation, articles of incorporation, constitutions, bylaws, or other organic documents of associations or institutions referred to in subsection (b) of this section may, without regard to anything contained therein or otherwise, hereafter be amended in such manner and to such extent and upon such vote or votes if any as the Federal Home Loan Bank Board may by regulation or otherwise provide.

(d) Nothing herein shall cause, or permit the Federal Home Loan Bank Board to cause, District of Columbia associations to be or become Federal savings and loan associations, or require the Board to impose on District of Columbia associations the same regulations as are imposed on Federal savings and loan associations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 26–103.

§§ 26–402, 26–403.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 26–103.

§ 26–404. Object—Powers of Home Loan Bank Board—Examination—Reports—Liquidation—Strict compliance required—Associations in business before March 4, 1909—Penalties—Misappropriation of funds made larceny.

CHANGE OF NAME

The name "Home Loan Bank Board" was changed to "Federal Home Loan Bank Board" by sec. 109(a)(3) of act Aug. 11, 1955, 69 Stat. 640.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 26–103.

§ 26–404a. Remainder of powers, duties and functions of Comptroller of the Currency relating to building associations and building and loan associations transferred to the Home Loan Bank Board.

CHANGE OF NAME

The name "Home Loan Bank Board" was changed to "Federal Home Loan Bank Board" by sec. 109(a)(3) of Act Aug. 11, 1955, 69 Stat. 640.

§ 26–405. Associations existing under laws of other States doing business in District of Columbia must comply—Provisions requisite—Penalty.

CHANGE OF NAME

The name "Home Loan Bank Board" was changed to "Federal Home Loan Bank Board" by sec. 109(a)(3) of Act Aug. 11, 1955, 69 Stat. 640.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–103, 26–404.

§§ 26–406 to 26–416.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 26–103.

Chapter 5.—CREDIT UNIONS

§§ 26–502 to 26–518.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 26–519, 26–521, 26–522.

§§ 26–519, 26–520.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 26–521.

§ 26–521. Converted credit union to be subject to provisions of Federal Credit Union Act—Fee not to be charged upon conversion—Liquidation of loans of converting union—New bylaws—Bylaws inconsistent with provisions of Federal Credit Union Act.

CROSS REFERENCES

Consumer credit cost disclosure, see title 15 U.S.C. § 1601 et seq.

Extortionate credit transactions, see title 18 U.S.C. § 891 et seq.

§ 26–522. Repeal of sections 26–501 to 26–518—Effective date.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 26–521.

Chapter 6.—MONEY LENDERS—LICENSES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 28:9–203, 29–843.

§ 26–601. Loaning of money on security—Rate of interest—License—Appointment of resident agent—Service on removal.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28–3303.

NOTES TO DECISIONS

Appeal and error

Where, at hearing on petition to expunge forged deed of release of prior deed of trust from land records, no issue was made by subsequent lender relative to failure of prior lender to produce some 99 notes, as required by subpoena duces tecum, subsequent lender, loan of which was found to be subordinate to that of prior lender, had no basis for complaint to reviewing court even if 99 notes were relevant to the issue whether prior lender could not enforce loan because of failure to comply wtih District of Columbia loan shark act. *General Investment Funds Real Estate Holding Company et al.* v. *W. Gildenhorn et al.* (Md. Ct. App. 1970, 271 A. 2d 650).

Where there was no allegation in pleadings before court that prior lender has been involved in transactions in

violation of the District of Columbia loan shark act and only allegation of subsequent lender, seeking to have its subsequent deed of trust accorded priority over prior deed of trust, was inadequate consideration for note, the chancellor properly refused to permit inquiry at hearing into loan transactions prior lender might have had with others in violation of loan shark act. *Id.*

Burden of proof

Burden was on corporate lender, seeking to quiet title to property under deed of trust given in connection with loan, to show that prior lender, who allegedly had engaged in business of lending in the District of Columbia and was not licensed under District loan shark act, was in the business of lending money in the District and that he was lending funds at an annual interest rate of more than 6%. *General Investment Funds Real Estate Holding Company, et al.* v. *W. Gildenhorn et al.* (Md. Ct. App. 1970, 271 A. 2d 650).

Commission as constituting usury

Commission paid by a borrower to a loan broker for obtaining a loan from a third person does not constitute usury. *J. Oliver* v. *United Mortgage Company, Inc., etc.* (D.C. App. 1967, 230 A. 2d 722).

Borrower was not entitled to recover portion of commission retained by loan broker for arranging loan on ground that transaction was usurious in absence of showing that broker was acting solely as agent of lender. *Id.*

Even if loan broker had advanced his own funds to borrower, but had done so for convenience only and with expectation of reimbursing himself promptly from funds supplied by lender, broker who had retained commission for that service was not liable to borrower for allegedly usurious interest on ground that broker was principal on loan. *Id.*

Discovery

Refusal to permit corporate lender to take deposition of bank for the purpose of showing that individual lender, who was not licensed under District of Columbia loan shark act, had engaged in sufficient number of loans in District to require licensing under act was correct since no notice had been given in Maryland action involving priority of loans made by corporate and individual borrowers of intent to rely on foreign law. *General Investment Funds Real Estate Holding Company et al.* v. *W. Gildenhorn et al.* (Md. Ct. App. 1970, 271 A. 2d 650).

Evidence—Admissibility

Since there was no properly admissible evidence before chancellor to identify some 99 notes allegedly made by individual lender in District of Columbia or to connect notes with lender, who allegedly engaged in lending business in the District and was not licensed under the District of Columbia loan shark act, chancellor correctly refused to admit notes into evidence in proceedings involving, inter alia, whether deed of trust was void under District of Columbia loan shark act. *General Investment Funds Real Estate Holding Company et al.* v. *W. Gildenhorn et al.* (Md. Ct. App. 1970, 271 A. 2d 650).

Lenders act may be illegal

Only the act of the lender and not the borrower may be illegal under this section. *I. Shulman* v. *M. Ritzenberg and L. N. Tauber* (1969, 47 F.R.D. 202).

§ 26–602. Application for license filed with Commissioners—Contents of application—Date and expiration of license—Notice of application posted and published—Protests—Hearings—Rejection of application.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28–3303.

§ 26–603. Bond to accompany application—Sureties—Actions on bond—Copy of bond to be furnished upon request—Renewal of bond.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28–3303.

§ 26–604. Register to be kept—Contents—Inspection of register—Annual statements.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28–3303.

§ 26–605. Rate of interest—Interest to cover all fees and expenses—Not to be deducted in advance—Statement to be furnished borrower—Amount of loans—Penalties.

CROSS REFERENCES

Consumer credit cost disclosure, see title 15 U.S.C. § 1601 et seq.

Extortionate credit transactions, see title 18 U.S.C. § 891 et seq.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28–3303.

NOTES TO DECISIONS

Commission as constituting usury

Commission paid by a borrower to a loan broker for obtaining a loan from a third person does not constitute usury. *J. Oliver* v. *United Mortgage Company, Inc., etc.* (D.C. App. 1967, 230 A. 2d 722).

Borrower was not entitled to recover portion of commission retained by loan broker for arranging loan on ground that transaction was usurious in absence of showing that broker was acting solely as agent of lender. *Id.*

Even if loan broker had advanced his own funds to borrower, but had done so for convenience only and with expectation of reimbursing himself promptly from funds supplied by lender, broker who had retained commission for that service was not liable to borrower for allegedly usurious interest on ground that broker was principal on loan. *Id.*

§ 26–606. Complaints—Hearings on Complaints—Record of hearings—Revoking of, or refusal to grant license.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28–3303.

§ 26–607. Penalties—Enforcement.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–606, 28–3303.

§§ 26–608, 26–609.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 28–3303.

§ 26–610. Persons, associations, and corporations exempt from operation of this chapter.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

For exemption from this chapter of cooperative associations, see sec. 29–843.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28–3303.

§ 26–611. Commissioners to enforce—Rules and regulations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28–3303.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(224) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to making rules and regulations for the conduct of business of making loans and for the enforcement of chapter 6, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 7.—COMMON TRUST FUNDS

§ 26–703. Court accountings.

Unless ordered by a court of competent jurisdiction the bank or trust company operating such common-trust funds is not required to render a court accounting with regard to such common-trust funds; but it may, by application to the Superior Court of the District of Columbia, secure approval of such accounting on such conditions as the court may establish. (Oct. 27, 1949, 63 Stat. 938, ch. 767, § 3; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(34), 84 Stat. 572.)

AMENDMENT

1970—Section 155(c)(34) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TITLE 27.—CEMETERIES AND CREMATORIES

Chapter 1.—CEMETERY ASSOCIATIONS—REGULATORY PROVISIONS

Sec.
27–130. Establishment of crematory—Rules and regulations.

§ 27–101. Incorporation—Powers.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27–106 to 27–108, 27–126.

§§ 27–102 to 27–104.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 27–106, 27–107, 27–126.

§ 27–105. Duty to inclose and underdrain.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27–106, 27–107, 27–126.

§ 27–106. Application of proceeds of sales of lots.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27–107, 27–126.

§ 27–107. Officers.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27–106, 27–126.

§§ 27–108 to 27–112.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 27–106, 27–107, 27–126.

§ 27–113. Grants and bequests for care of lots.

It shall be lawful for such association to take and hold any grant, donation, or bequest upon trust to apply the income thereof, under the direction of the board of managers, for the embellishment, preservation, renewal, or repair of any tomb, monument, gravestone, or other structure, fence, railing, or other inclosure in or around any cemetery lot, or for the planting and cultivation of any trees, shrubs, flowers, or plants in or around any cemetery lot, according to the terms of such grant, donation, or bequest; and the court having probate jurisdiction shall have full power and jurisdiction to compel the due performance of such trusts, or any of them, upon a bill filed by the proprietor of any lot in such cemetery for that purpose. (Mar. 3, 1901, 31 Stat. 1295, ch. 854, § 669; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 158(c)(3), 84 Stat. 576.)

AMENDMENT

1970—Section 158(c)(3) of Act July 29, 1970, Public Law 91–358 amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27–106, 27–107, 27–126.

§ 27–114. Distance from city and from dwellings.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27–106, 27–107, 27–114a, 27–126.

§ 27–114a. Commissioners authorized to license certain lands for cemetery purposes.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§§ 27–115 to 27–117.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 27–106, 27–107, 27–126.

§ 27–119a. Disposal of dead bodies—Permits required—Movement and disposition of tissue by tissue banks—Violations.

It shall be unlawful to inter, disinter, or otherwise dispose of the dead body, or any part thereof, of any human being, except upon a permit, duly issued by the Director of Public Health of the District of Columbia, or such other person or persons as the Commissioners of the District of Columbia shall designate, or to remove from place to place, or transport, the dead body, or any part thereof, of a human being, except, upon such terms and conditions as the Commissioners may specify. Notwithstanding the provisions of the preceding sentence, the Commissioners may, in their discretion, by regulation authorize (a) tissue banks operating pursuant to chapter 2A of title 2 or (b) other persons subject to regulations made pursuant to chapter 2A or 2B of title 2, or both, to remove, transport, and dispose of tissue taken from such dead body without such permit. Any violation hereof shall be subject to the penalties contained in section 27–126. (Mar. 3, 1901, 31 Stat. 1296, ch. 854, §§ 675, 676, as added Sept. 22, 1950, 64 Stat. 904, ch. 985, § 1; Sept. 10, 1962, 76 Stat. 536, Pub. L. 87–656, § 10; May 26, 1970, Pub. L. 91–268, § 9(f), 84 Stat. 270.)

CODIFICATION

References to "chapter 2A of title 2" and "chapter 2B of title 2" were substituted for "the District of Columbia Tissue Bank Act" and "the District of Columbia Anatomical Gift Act", respectively.

AMENDMENTS

1970—Section 9(f) of act May 26, 1970, Pub. L. 91–268, inserted in clause (b) reference to chapter 2B of title 2.

1962—Section 10 of act Sept. 10, 1962, amended this section by striking, in the first sentence the words, "remove, transport" and by inserting immediately after "designate" the words, "or to remove from place to place, or transport, the dead body, or any part thereof, of a human being, except" and by the addition of the second sentence as above set out beginning with the word "Notwithstanding" and ending with the word "permit".

1950—Section 1 of act Sept. 22, 1950, repealed former sections 675 and 676 of act Mar. 3, 1901, and substituted new sections therefor.

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 2–251.

EFFECTIVE DATE OF 1950 AMENDMENT

Section 2 of act Sept. 22, 1950, provided: "This Act [enacting this section] shall take effect sixty days after enactment."

CHANGE OF NAME

"Director of Public Health" substituted for "Health Officer" to conform to act Aug. 1, 1950, 64 Stat. 393, ch. 513, § 1. See note set out under section 6–101.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(225) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to regulations, authorizing tissue banks and others to remove etc., dead bodies of human beings without permit, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

CROSS REFERENCE

See other penalty provisions, § 2–254.

Unlawful traffic in dead bodies, grave robbery, penalties, see §§ 2–206, 22–3103.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–251, 2–252, 2–253, 2–254, 2–259, 2–260, 27–106, 27–107, 27–126.

§ 27–120. Reports of death—Keeping of dead bodies—Exhibition of dead bodies.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27–106, 27–107, 27–126.

§ 27–121. Place of burial.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27–106, 27–107, 27–126.

§§ 27–122, 27–123.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 27–106, 27–107, 27–126.

§ 27–124. Crematories—Consent of property owners—Permit.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27–106, 27–107, 27–126.

§ 27–125. Permit to cremate—Embalming—Removal of tissue immediately after death.

It shall be unlawful for any person or persons to cremate or otherwise to destroy the dead body, or part of the dead body, of any human being in said District before the issue of the burial permit by the director of public health of said District, and then only when said permit is countersigned by the Chief Medical Examiner, authorizing such cremation or destruction. It shall be unlawful for any person or persons to embalm, inject, or by any smiliar method preserve the dead body, or part of the dead body, of any human being in said District within four hours after death or before the issue of the death certificate; and in case the death is believed to be due to other than natural causes, or the cause thereof is unknown, such embalming injecting, or preserving shall at no time be done unless such death certificate has been signed or approved by the Chief Medical Examiner. Notwithstanding the provisions of this section, whenever any person is pronounced dead by a physician duly licensed or duly registered under subchapter I of chapter 1 of title 2, tissue donated in accordance with the provisions of chapter 2A or 2B of title 2 may be removed by or under the supervision of a person licensed under the authority of section 2–253 for preservation in a tissue bank operating pursuant to chapter 2A of title 2, or for use in accordance with the provisions of chapter 2B of title 2, without regard for any time limitation, or for any permit or certificate requirement, established by this section: *Provided,* That with respect to a dead human body in the custody of the Chief Medical Examiner or under his jurisdiction, no tissue shall be removed therefrom for preservation except with the specific approval of the Chief Medical Examiner in each case. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 683; Aug. 1, 1950, 64 Stat. 393, ch. 153, § 1; Sept. 10, 1962, 76 Stat. 537, Pub. L. 87–656, § 11; May 26, 1970, Pub. L. 91–268, § 9(e), 84 Stat. 270; July 29, 1970, Pub. L. 91–358, § 160(a)(1), title I, 84 Stat. 578.)

CODIFICATION

References to "subchapter I of chapter 1 of title 2", "chapter 2A of title 2", and "chapter 2B of title 2" were substituted for "the Healing Arts Practice Act of the District of Columbia", "the District of Columbia Tissue Bank Act", and "the District of Columbia Anatomical Gift Act", respectively.

AMENDMENTS

1970—Section 160(a)(1) of Act July 29, 1970, Public Law 91–358 amended section (A) by striking out "coroner of said District" each place it appears and inserting in lieu thereof "Chief Medical Examiner", and (B) by striking out "Coroner" each place it appears and inserting in lieu thereof "Chief Medical Examiner".

Section 9(e) of Act May 26, 1970, Pub. L. 91–268, amended the last sentence by inserting reference to "the District of Columbia Anatomical Gift Act".

1962—Section 11 of Act Sept. 10, 1962, amended section by the addition of the matter above set out and beginning with the word "Notwithstanding" and ending with the word "case."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATE OF 1962 AMENDMENT

See note to section 2–251.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 2–251 to 2–254, 2–259, 2–260, 27–106, 27–107, 27–126.

§ 27–126. Penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27–106, 27–107, 27–119a.

§ 27–127. Prosecutions.

Prosecutions hereunder shall be in the Superior Court of the District of Columbia, in the name of said District: *Provided,* That any person or persons so tried shall have the privilege, when demanded, of a trial by jury, as in other jury cases in said Superior Court of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 685; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–384, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27–106, 27–107, 27–126.

§ 27–128. Disinterment by order of the court.

This chapter shall not be construed to (1) interfere with or prevent the disinterment of any body in accordance with section 11–2311 of the District of Columbia Code, or (2) interfere with the disposal of the ashes of bodies which have been cremated. (Mar. 3, 1901, 31 Stat. 1298, ch. 854, § 686; June 30, 1902, 32 Stat. 534, ch. 1329, § 686; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, §160 (a)(2), title I, 84 Stat. 578.)

AMENDMENT

1970—Section 160(a)(2) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 27–106, 27–107, 27–126.

§ 27–129. Public crematory—Cremation required in certain cases.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 27–131.

§ 27–130. Establishment of crematory—Rules and regulations.

The Commissioners of the District of Columbia are authorized and directed to operate on reservation thirteen, commonly known as the Washington Asylum grounds, in the city of Washington, in said District, a crematorium of size sufficient for the incineration of all bodies that can not, except at public expense, be disposed of within a reasonable time after death. Said Commissioners are hereby authorized to make and enforce all rules necessary for the proper maintenance and operation of said crematorium. (Apr. 20, 1906, 34 Stat. 123, ch. 1641, § 2; Feb. 22, 1921, 41 Stat. 1144, ch. 70, § 7; Dec. 4, 1967, Pub. L. 90–173, § 1, 81 Stat. 532.)

AMENDMENTS

1967—Act Dec. 4, 1967, Pub. L. 90–173, amended section by:

Deleting from the first sentence the following:

", and for the incineration of such other bodies as may be presented for that purpose by the persons having custody thereof"

Striking out the comma after the word "crematorium", in the second sentence, inserting a period in lieu and striking out the following language from the second and third sentences:

"and to prescribe and collect for the incineration of bodies not necessarily disposed of at public expense fees in such amounts as may be required to defray the cost of incineration: *Provided,* That in any case the Commissioners may, by special order, waive or reduce the usual charges whenever, in the opinion of said Commissioners, to enforce such charges would be burdensome or oppressive upon the person or persons responsible for the disposal of the remains. All fees collected under the provisions of this section shall be paid to the collector of taxes of the District of Columbia, and be deposited by him in the Treasury of the United States wholly to the credit of the District of Columbia."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(226) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section as to making rules for the proper maintenance and operation of a public crematorium, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 27–131.

TITLE 28.—COMMERCIAL INSTRUMENTS AND TRANSACTIONS

SUBTITLE I.—UNIFORM COMMERCIAL CODE

Article 1.—GENERAL PROVISIONS

PART 1.—SHORT TITLE, CONSTRUCTION, APPLICATION AND SUBJECT MATTER

§ 28:1–102. Purposes; rules of construction; variation by agreement.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:1–201.

NOTES TO DECISIONS

Applicability of Uniform Commercial Code

The issues in a law suit by a buyer of automobile against chattel mortgagee, which held the mortgage created by the seller and which repossessed automobile, were governed by the provisions of Uniform Commercial Code, so that the determination of issues in accordance with theory of estoppel constituted error; however, where judgment of trial judge was correct, such error did not require reversal. *Franklin Investment Co., Inc.* v. *E. P. Homburg* (D.C. App. 1969, 252 A. 2d 95).

§ 28:1–103. Supplementary general principles of law applicable.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:1–201.

PART 2.—GENERAL DEFINITIONS AND PRINCIPLES OF INTERPRETATION

§ 28:1–201. General definitions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–1209, 28:7–102, 28:9–105, 28:9–204, 28:9–307, 28:10–104, 38–205, 40–701, 40–901.

§ 28:1–205. Course of dealing and usage of trade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:1–201, 28:2–202, 28:2–208.

Article 2.—SALES

CROSS REFERENCES

Consumer credit cost disclosure, see title 15 U.S.C. § 1601 et seq.

Extortionate credit transactions, see title 18 U.S.C. § 891 et seq.

PART 1.—SHORT TITLE, GENERAL CONSTRUCTION AND SUBJECT MATTER

§ 28:2–103. Definitions and index of definitions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:7–102.

§§ 28:2–104, 28:2–105.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 28:2–103.

§ 28:2–106. Definitions: "contract"; "agreement"; "contract for sale"; "sale"; "present sale"; "conforming" to contract; "termination"; "cancellation".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2–103, 28:5–103, 28:7–102, 28:9–105.

§ 28:2–107. Goods to be severed from realty; recording.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–105.

PART 2.—FORUM, FORMATION AND READJUSTMENT OF CONTRACT

§ 28:2–201. Formal requirements; statute of frauds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:1–206, 28:2–209, 28:2–326

§ 28:2–202. Final written expression; parol or extrinsic evidence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2–316, 28:2–326.

§ 28:2–204. Formation in general.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–311.

§ 28:2–208. Course of performance or practical construction.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:1–201, 28:2–202.

PART 3.—GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

§ 28:2–310. Open time for payment or running of credit; authority to ship under reservation.

NOTES TO DECISIONS

Buyer's remedy for breach of warranty

Rescission is not the buyer's only remedy for a breach of warranty; the buyer may also affirm the contract and seek damages for its breach. *Rubewa Products Co., Inc.* v. *Watson's Quality Turkey Products, Inc.* (D.C. App. 1968, 242 A. 2d 609).

Place of inspection

Where turkey broker's remedy for turkey producer's breach of sales contract was not limited to rescission and sales contract did not provide for inspection upon delivery to broker, trial court's finding that place of inspection was point of delivery rather than ultimate destination was reversible error in broker's action against producer for breach of contract. *Rubewa Products Co., Inc.* v. *Watson's Quality Turkey Products, Inc.* (D.C. App. 1968, 242 A. 2d 609).

§ 28:2–311. Options and cooperation respecting performance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–319.

§ 28:2–312. Warranty of title and against infringement; buyer's obligation against infringement.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–607.

§ 28:2–313. Express warranties by affirmation, promise, description, sample.

NOTES TO DECISIONS

Breach of warranty

In view of fact that the true strength of concrete would not be revealed until after 28-day curing period had elapsed, buyer's use of concrete originating at seller's plant, even though tests performed at jobsite indicated

that concrete contained air in excess of normal bounds, did not constitute negligent or malicious act on part of the buyer so as to absolve the seller from breach of warranty. *S. S. Bevard et al.* v. *Howat Concrete Company, Inc.* (1970, 433 F. 2d 1202, — U.S. App. D.C. —).

§ 28:2–314. Implied warranty: merchantability; usage of trade.

NOTES TO DECISIONS

Breach of warranty

In view of fact that the true strength of concrete would not be revealed until after 28-day curing period had elapsed, buyer's use of concrete originating at seller's plant, even though tests performed at jobsite indicated that concrete contained air in excess of normal bounds, did not constitute negligent or malicious act on part of the buyer so as to absolve the seller from breach of warranty. *S. S. Bevard et al.* v. *Howat Concrete Company, Inc.* (1970, 433 F. 2d 1202, — U.S. App. D.C. —).

§ 28:2–315. Implied warranty: fitness for particular purpose.

NOTES TO DECISIONS

Breach of warranty

In view of fact that the true strength of concrete would not be revealed until after 28-day curing period had elapsed, buyer's use of concrete originating at seller's plant, even though tests performed at jobsite indicated that concrete contained air in excess of normal bounds, did not constitute negligent or malicious act on part of the buyer so as to absolve the seller from breach of warranty. *S. S. Bevard et al.* v. *Howat Concrete Company, Inc.* (1970, 433 F. 2d 1202, — U.S. App. D.C. —).

§ 28:2–316. Exclusion or modification of warranties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–311.

§ 28:2–319. F.O.B. and F.A.S. terms.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–314.

REFERENCE IN TEXT

The reference in subsection (c) to section 28:8–323 is obviously an error, as there is no such section. In all probability it should be 28:2–323.

§ 28:2–321. C.I.F. or C. & F.; "net landed weights"; "payment on on[1] arrival"; warranty of condition on arrival.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–513.

§ 28:2–323. Form of bill of lading required in overseas shipment; "overseas".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2–103, 28:2–319, 28:2–503, 28:7–102.

§ 28:2–324. "No arrival, no sale" term.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–613.

§ 28:2–325. "Letter of credit" term; "confirmed credit".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–103.

§ 28:2–326. Sale on approval and sale or return; consignment sales and rights of creditors.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:1–201, 28:2–103.

§ 28:2–237. Special incidents of sale on approval and sale or return.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–509.

[1] So in original. Probably should read "payment on arrival".

PART 4.—TITLE, CREDITORS AND GOOD FAITH PURCHASERS

§ 28:2–401. Passing of title; reservation for security; limited application of this section.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:1–201, 28:2–106.

§ 28:2–402. Rights of seller's creditors against sold goods.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:7–504.

§ 28:2–403. Power to transfer; good faith purchase of goods; "entrusting".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2–103, 28:2–702, 28:7–503.

PART 5.—PERFORMANCE

§ 28:2–501. Insurable interest in goods; manner of identification of goods.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2–103, 28:2–401.

§ 28:2–502. Buyer's right to goods on seller's insolvency.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2–402, 28:2–711.

§ 28:2–503. Manner of seller's tender of delivery.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2–319, 28:2–509.

§ 28:2–504. Shipment by seller.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–319.

§ 28:2–505. Seller's shipment under reservation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–509.

§ 28:2–507. Effect of seller's tender; delivery on condition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–505.

§ 28:2–508. Cure by seller of improper tender or delivery; replacement.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–323.

NOTES TO DECISIONS

Buyer's refusal to allow correction of defect

Seller's proffered removal of television chassis for a short period in order to determine cause of color malfunction and ascertain extent of adjustment or correction needed to effect full operational efficiency presented no great inconvenience to buyer, and refusal of buyer's daughter, on buyer's behalf, to allow this precluded rescission. *W. Wilson t/a etc.* v. *N. Scampoli* (D.C. App. 1967, 228 A. 2d 848).

§ 28:2–510. Effect of breach on risk of loss.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–509.

§ 28:2–513. Buyer's right to inspection of goods.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–310.

NOTES TO DECISIONS

Buyer's remedy for breach of warranty

Rescission is not the buyer's only remedy for a breach of warranty; the buyer may also affirm the contract and seek damages for its breach. *Rubewa Products Co., Inc.* v.

Watson's Quality Turkey Products, Inc. (D.C. App. 1968, 242 A. 2d 609).

Place of inspection

Where turkey broker's remedy for turkey producer's breach of sales contract was not limited to rescission and sales contract did not provide for inspection upon delivery to broker, trial court's finding that place of inspection was point of delivery rather than ultimate destination was reversible error in broker's action against producer for breach of contract. *Rubewa Products Co., Inc.* v. *Watson's Quality Turkey Products, Inc.* (D.C. App. 1968, 242 A. 2d 609).

Part 6.—Breach, Repudiation and Excuse

§ 28:2–602. Manner and effect of rightful rejection.

Section Referred to in Other Sections

This section is referred to in section 28:2–606.

§§ 28:2–603, 28:2–604.

Sections Referred to in Other Sections

These sections are referred to in section 28:2–602.

§ 28:2–606. What constitutes acceptance of goods.

Section Referred to in Other Sections

This section is referred to in sections 28:2–103, 28:2–201.

§ 28:2–607. Effect of acceptance; notice of breach; burden of establishing breach after acceptance; notice of claim or litigation to person answerable over.

Section Referred to in Other Sections

This section is referred to in section 28:2–714.

NOTES TO DECISIONS

Buyer's remedy for breach of warranty

Rescission is not the buyer's only remedy for a breach of warranty; the buyer may also affirm the contract and seek damages for its breach. *Rubewa Products Co., Inc.* v. *Watson's Quality Turkey Products, Inc.* (D.C. App. 1968, 242 A. 2d 609).

Place of inspection

Where turkey broker's remedy for turkey producer's breach of sales contract was not limited to rescission and sales contract did not provide for inspection upon delivery to broker, trial court's finding that place of inspection was point of delivery rather than ultimate destination was reversible error in broker's action against producer for breach of contract. *Rubewa Products Co., Inc.* v. *Watson's Quality Turkey Products, Inc.* (D.C. App. 1968, 242 A. 2d 609).

§ 28:2–608. Revocation of acceptance in whole or in part.

NOTES TO DECISIONS

Buyer's refusal to allow correction of defect

Seller's proffered removal of television chassis for a short period in order to determine cause of color malfunction and ascertain extent of adjustment or correction needed to effect full operational efficiency presented no great inconvenience to buyer, and refusal of buyer's daughter, on buyer's behalf, to allow this precluded rescission, D.C. Code. *W. Wilson t/a etc.* v. *N. Scampoli* (D.C. App. 1967, 228 A. 2d 848).

§ 28:2–609. Right to adequate assurance of performance.

Section Referred to in Other Sections

This section is referred to in sections 28:2–210, 28:2–611.

§ 28:2–610. Anticipatory repudiation.

Section Referred to in Other Sections

This section is referred to in sections 28:2–709, 28:5–115.

§ 28:2–612. "Installment contract"; breach.

Section Referred to in Other Sections

This section is referred to in sections 28:2–103, 28:2–601, 28:2–616, 28:2–703, 28:2–711.

§ 28:2–613. Casualty to identified goods.

Section Referred to in Other Sections

This section is referred to in section 28:2–324.

Part 7.—Remedies

§ 28:2–702. Seller's remedies on discovery of buyer's insolvency.

Section Referred to in Other Sections

This section is referred to in section 28:2–705.

§ 28:2–703. Seller's remedies in general.

Section Referred to in Other Sections

This section is referred to in sections 28:2–610, 28:2–602, 28:2–706.

§ 28:2–704. Seller's right to identify goods to the contract notwithstanding breach or to salvage unfinished goods.

Section Referred to in Other Sections

This section is referred to in section 28:2–610.

§ 28:2–705. Seller's stoppage of delivery in transit or otherwise.

Section Referred to in Other Sections

This section is referred to in sections 28:2–702, 28:2–703, 28:7–403.

§ 28:2–706. Seller's resale including contract for resale.

Section Referred to in Other Sections

This section is referred to in sections 28:2–703, 28:2–707, 28:2–711, 28:2–718.

§ 28:2–707. "Person in the position of a seller".

Section Referred to in Other Sections

This section is referred to in sections 28:2–103, 28:2–104, 28:2–706, 28:5–115.

§ 28:2–708. Seller's damages for non-acceptance or repudiation.

Section Referred to in Other Sections

This section is referred to in sections 28:2–703, 28:2–723.

§ 28:2–709. Action for the price.

Section Referred to in Other Sections

This section is referred to in section 28:2–703.

§ 28:2–710. Seller's incidental damages.

Section Referred to in Other Sections

This section is referred to in sections 28:2–706 to 28:2–708, 28:5–115.

§ 28:2–711. Buyer's remedies in general; buyer's security interest in rejected goods.

Section Referred to in Other Sections

This section is referred to in sections 28:2–602, 28:2–603, 28:2–610, 28:2–706.

§ 28:2–712. "Cover"; buyer's procurement of substitute goods.

Section Referred to in Other Sections

This section is referred to in section 28:2–103.

§ 28:2–713. Buyer's damages for non-delivery or repudiation.

Section Referred to in Other Sections

This section is referred to in sections 28:2–711, 28:2–723.

§ 28:2–714. Buyer's damages for breach in regard to accepted goods.

NOTES TO DECISIONS

Breach of warranty

In view of fact that the true strength of concrete would not be revealed until after 28-day curing period had

elapsed, buyer's use of concrete originating at seller's plant, even though tests performed at jobsite indicated that concrete contained air in excess of normal bounds, did not constitute negligent or malicious act on part of the buyer so as to absolve the seller from breach of warranty. *S. S. Bevard et al.* v. *Howat Concrete Company, Inc.* (1970, 433 F. 2d 1202, — U.S. App. D.C. —).

Damages for breach of contract

Under breach of contract, whether a warranty or otherwise, defendant is liable for those damages which are a natural consequence and proximate result of his conduct. *Rubewa Products Co., Inc.* v. *Watson's Quality Turkey Products, Inc.* (D.C. App. 1968, 242 A. 2d 609).

Measure of damages

Under breach of contract, whether a warranty or otherwise, defendant is liable for those damages which are a natural consequence and proximate result of his conduct. *J. A. Meyers et ano.* v. *G. Antone et ano.* (D.C. App. 1967, 227 A. 2d 56).

§ 28:2–715. Buyer's incidental and consequential damages.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2–712, 28:2–713.

NOTES TO DECISIONS

Breach of warranty

In view of fact that the true strength of concrete would not be revealed until after 28-day curing period had elapsed, buyer's use of concrete originating at seller's plant, even though tests performed at jobsite indicated that concrete contained air in excess of normal bounds, did not constitute negligent or malicious act on part of the buyer so as to absolve the seller from breach of warranty. *S. S. Bevard et al.* v. *Howat Concrete Company, Inc.* (1970, 433 F. 2d 1202, — U.S. App. D.C. —).

§ 28:2–716. Buyer's right to specific performance or replevin.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2–402, 28:2–711.

§§ 28:2–718, 28:2–719.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 28:2–316, 28:2–601.

§ 28:2–723. Proof of market price: time and place.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2–708, 28:2–713.

§ 28:2–725. Statute of limitations in contracts for sale.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 12–301.

Article 3.—COMMERCIAL PAPER

PART 1.—SHORT TITLE, FORM AND INTERPRETATION

§ 28:3–102. Definitions and index of definitions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:4–104.

§ 28:3–104. Form of negotiable instruments; "draft"; "check"; "certificate of deposit"; "note".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2–103, 28:3–102, 28:4–104, 28:5–103, 28:9–105.

NOTES TO DECISIONS

Negotiability

Money orders which were made "payable to" named payee and were not "payable to order or to bearer" were not negotiable. *Nation-Wide Check Corporation* v. *A. J. Banks et ano.* (D.C. App. 1969, 260 A. 2d 367).

§§ 28:3–108, 28:3–109.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 28:3–102.

§ 28:3–115. Incomplete instruments.

(1) When a paper whose contents at the time of signing show that it is intended to become an instrument is signed while still incomplete in any necessary respect it cannot be enforced until completed, but when it is completed in accordance with authority given it is effective as completed.

(2) If the completion is unauthorized the rules as to material alteration apply (section 28:3–407), even though the paper was not delivered by the maker or drawer; but the burden of establishing that any completion is unauthorized is on the party so asserting. (Dec. 30, 1963, Pub. L. 88–243, § 1, 77 Stat. 676, eff. Jan. 1, 1965.)

CODIFICATION

This section is set out in this supplement to correct a typographical error in the section as it appears in the 1967 edition of the code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3–413.

PART 2.—TRANSFER AND NEGOTIATION

§ 28:3–201. Transfer: right to indorsement.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3–603.

NOTES TO DECISIONS

Bank's rights

A bank in which the payee deposited non-negotiable money orders has no greater rights than the payee. *Nation-Wide Check Corporation* v. *A. J. Banks et ano.* (D.C. App. 1969, 260 A. 2d 367).

§ 28:3–205. Restrictive indorsements.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3–102, 28:3–206, 28:3–419.

§ 28:3–206. Effect of restrictive indorsement.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3–419.

§ 28:3–208. Reacquisition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3–601.

PART 3.—RIGHTS OF A HOLDER

§ 28:3–302. Holder in due course.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3–102, 28:3–206, 28:4–104, 28:4–209, 28:5–103, 28:5–114, 28:9–105, 28:9–309.

NOTES TO DECISIONS

Burden of proof

In the case, the court held that the assignee of conditional sale contract and note, that called for "time price" more than 8% greater than balance due, did not establish that transaction was not usurious, and thus did not establish that it was holder in due course, since there was no showing that "finance charge" or "carrying charge" was included to compensate seller for expense other than price of loan. *L. Fuller* v. *Universal Acceptance Corporation* (D.C. App. 1970, 264 A. 2d 506).

Forfeiture of interest

In this case the court held that the assignee of a conditional sales contract and note was not entitled to recover "finance charge" or "carrying charge" which exceeded 8% per annum since the assignee did not establish that it was holder in due course and that transaction was not usurious. *L. Fuller* v. *Universal Acceptance Corporation* (D.C. App. 1970, 264 A. 2d 506).

Tainted transaction

The court held, that in this case the working arrangement between the conditional seller of television set and the assignee of purchasers' note was tainted such that it bore a "badge of fraud" and supported trial judge's ruling in suit by assignee on note that the note was usurious and that assignee could not be given status of holder in due course. *Universal Acceptance Corporation* v. *F. Marzullo et ano.* (D.C. App. 1969, 260 A. 2d 90).

§ 28:3–303. Taking for value.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:1–201.

§ 28:3–304. Notice to purchaser.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3–206.

§ 28:3–305. Rights of a holder in due course.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3–408.

NOTES TO DECISIONS

Directed Verdict

In an action on a note, the court agreed with appellants contention that the evidence raised fact questions as to whether note was secured from makers by misrepresentation and without their knowing or having reasonable opportunity to know of its character or essential terms so as to preclude direction of verdict for holder. *J. L. Kearney, et al.* v. *The Commerce Investment Company* (D.C. App. 1970, 262 A. 2d 804).

By moving for directed verdict, proponent admits, for purposes of motion, truth of evidence for opponent, with all reasonable inferences to be derived therefrom. *Id.*

Holder in due course

In a case where depositary bank gave its customer provisional credit on a check deposited with the bank and permitted customer to withdraw a portion of the credit before bank discovered that the drawers had stopped payment, bank was a holder in due course as to amount of provisional credit withdrawn and, in absence of applicable defenses as provided in section 28:3–305, could recover from drawers. *Falls Church Bank etc.* v. *Wesley Heights, Inc.* (D.C. App. 1969, 256 A. 2d 915).

§ 28:3–306. Rights of one not holder in due course.

NOTES TO DECISIONS

Burden of proof

In a case where payee transferred nonnegotiable money orders, the transferee, although not holder in due course, could establish a case against the payor, which had stopped payment on the money orders, by production of instruments and burden of proving want of consideration or any other defense was upon the payor. *Nation-Wide Check Corporation* v. *A. J. Banks et ano.* (D.C. App. 1969, 260 A. 2d 367).

§ 28:3–307. Burden of establishing signatures, defenses and due course.

NOTES TO DECISIONS

Burden of proof

In the case, the court held that the assignee of conditional sale contract and note, that called for "time price" more than 8% greater than balance due, did not establish that transaction was not usurious, and thus did not establish that it was holder in due course, since there was no showing that "finance charge" or "carrying charge" was included to compensate seller for expense other than price of loan. *L. Fuller* v. *Universal Acceptance Corporation* (D.C. App. 1970, 264 A. 2d 506).

In a case where payee transferred nonnegotiable money orders, the transferee, although not holder in due course, could establish a case against the payor, which had stopped payment on the money orders, by production of instruments and burden of proving want of consideration or any other defense was upon the payor. *Nation-Wide Check Corporation* v. *A. J. Banks et ano.* (D.C. App. 1969, 260 A. 2d 367).

Establishment of a defense

Without introduction of some evidence, the defenses of failure of consideration, fraud, and usury raised by the signer of note in his pleading, did not constitute "establishment of a defense" under statute providing that once signatures are admitted or established, production of the instrument entitles a holder to recover on it unless the defendant establishes a defense. *Calvert Credit Corporation* v. *I. J. Humble* (D.C. App. 1969, 249 A. 2d 518).

Forfeiture of interest

In this case the court held that the assignee of a conditional sales contract and note was not entitled to recover "finance charge" or "carrying charge" which exceeded 8% per annum since the assignee did not establish that it was holder in due course and that transaction was not usurious. *L. Fuller* v. *Universal Acceptance Corporation* (D.C. App. 1970, 264 A. 2d 506).

PART 4.—LIABILITY OF PARTIES

§ 28:3–401. Signature.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3–102.

§ 28:3–404. Unauthorized signatures.

NOTES TO DECISIONS

Evidence—Sufficiency

In a depositor's action against bank for reimbursement for bank's payment of allegedly forged checks, the court held that the fact that checks charged to depositor's checking account were not reflected in depositor's own records, which checks were not produced in evidence, did not provide a basis upon which the jury could reasonably have inferred or found that the missing checks were drawn by a forger and were, therefore, improperly charged to the depositor's account. *B. G. Myrick* v. *National Savings & Trust Company* (D.C. App. 1970, 268 A. 2d 526).

§ 28:3–406. Negligence contributing to alteration or unauthorized signature.

NOTES TO DECISIONS

Negligence

"In a depositor's action against bank for reimbursement for bank's payment of allegedly forged checks, the court held that the depositor was negligent as a matter of law in failing to inquire of bank as to her lack of receipt of monthly statements and cancelled checks, especially after bank informed depositor that bank's records showed she had no money in her account, and this negligence substantially contributed to the making of an unauthorized signature and depositor was precluded from asserting lack of bank's authority to pay allegedly forged checks. *B. G. Myrick* v. *National Savings & Trust Company* (D.C. App. 1970, 268 A. 2d 526).

§ 28:3–407. Alteration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3–102, 28:3–115, 28:3–601.

§ 28:3–408. Consideration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3–306.

§ 28:3–410. Definition and operation of acceptance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3–102, 28:4–104, 28:5–103.

§ 28:3–411. Certification of a check.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3–102, 28:3–601, 28:4–104.

§ 28:3–412. Acceptance varying draft.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3–601.

§ 28:3–415. Contract of accommodation party.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3–102.

§ 28:3–419. Conversion of instrument; innocent representative.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:4–203.

PART 5.—PRESENTMENT, NOTICE OF DISHONOR AND PROTEST

§ 28:3–502. Unexcused delay; discharge.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3–501, 28:3–601.

§ 28:3–504. How presentment made.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3–102, 28:4–104.

§ 28:3–505. Rights of party to whom presentment is made.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:4–210.

§ 28:3–507. Dishonor; holder's right of recourse; term allowing re-presentment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2–103, 28:3–102.

§§ 28:3–508, 28:3–509.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 28:3–102, 28:4–104.

§ 28:3–511. Waived or excused presentment, protest or notice of dishonor or delay therein.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3–501.

PART 6.—DISCHARGE

§ 28:3–603. Payment or satisfaction.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3–301, 28:3–601.

§ 28:3–604. Tender of payment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3–118, 28:3–601.

§§ 28:3–605, 28:3–606.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 28:3–601.

PART 8.—MISCELLANEOUS

§ 28:3–801. Drafts in a set.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3–112.

§ 28:3–802. Effect of instrument on obligation for which it is given.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–511.

§ 28:3–805. Instruments not payable to order or to bearer.

NOTES TO DECISIONS

Burden of proof

In a case where payee transferred nonnegotiable money orders, the transferee, although not holder in due course, could establish a case against the payor, which had stopped payment on the money orders, by production of instruments and burden of proving want of consideration or any other defense was upon the payor. *Nation-Wide Check Corporation* v. *A. J. Banks et ano.* (D.C. App. 1969, 260 A. 2d 367).

Article 4.—BANK DEPOSITS AND COLLECTIONS

PART 1.—GENERAL PROVISIONS AND DEFINITIONS

§ 28:4–102. Applicability.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:1–104.

§ 28:4–104. Definitions and index of definitions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3–102, 28:5–103.

§ 28:4–105. "Depositary bank"; "intermediary bank"; "collecting bank"; "payor bank"; "presenting bank"; "remitting bank".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3–102, 28:4–104, 28:8–102.

PART 2.—COLLECTION OF ITEMS: DEPOSITARY AND COLLECTING BANKS

§ 28:4–201. Presumption and duration of agency status of collecting banks and provisional status of credits; applicability of article; item indorsed "pay and bank".

NOTES TO DECISIONS

Holder in due course

In a case where depositary bank gave its customer provisional credit on a check deposited with the bank and permitted customer to withdraw a portion of the credit before bank discovered that the drawers had stopped payment, bank was a holder in due course as to amount of provisional credit withdrawn and, in absence of applicable defenses as provided in section 28:3–305, could recover from drawers. *Falls Church Bank etc.* v. *Wesley Heights, Inc.* (D.C. App. 1969, 256 A. 2d 915).

§ 28:4–207. Warranties of customer and collecting bank on transfer or presentment of items; time for claims.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:4–302.

§ 28:4–208. Security interest of collecting bank in items, accompanying documents and proceeds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:1–201, 28:9–203, 28:9–302, 28:9–312.

NOTES TO DECISIONS

Holder in due course

In a case where depositary bank gave its customer provisional credit on a check deposited with the bank and permitted customer to withdraw a portion of the credit before bank discovered that the drawers had stopped payment, bank was a holder in due course as to amount of provisional credit withdrawn and, in absence of applicable defenses as provided in section 28:3–305, could recover from drawers. *Falls Church Bank etc.* v. *Wesley Heights, Inc.* (D.C. App. 1969, 256 A. 2d 915).

§ 28:4–209. When bank gives value for purposes of holder in due course.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:1–201.

NOTES TO DECISIONS

Holder in due course

In a case where depositary bank gave its customer provisional credit on a check deposited with the bank

and permitted customer to withdraw a portion of the credit before bank discovered that the drawers had stopped payment, bank was a holder in due course as to amount of provisional credit withdrawn and, in absence of applicable defenses as provided in section 28:3–305, could recover from drawers. *Falls Church Bank, etc.* v. *Wesley Heights, Inc.* (D.C. App. 1969, 256 A. 2d 915).

§ 28:4–210. Presentment by notice of item not payable by, through or at a bank; liability of secondary parties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3–504.

§ 28:4–211. Media of remittance; provisional and final settlement in remittance cases.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:4–201, 28:4–212 to 28:4–214.

§ 28:4–212. Right of charge-back or refund.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:4–201, 28:4–202.

§ 28:4–213. Final payment of item by payor bank; when provisional debits and credits become final; when certain credits become available for withdrawal.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:4–201, 28:4–212, 28:4–214, 28:4–301, 28:4–303.

PART 3.—COLLECTION OF ITEMS: PAYOR BANKS

§ 28:4–301. Deferred posting; recovery of payment by return of items; time of dishonor.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:3–507, 28:4–212.

§ 28:4–302. Payor bank's responsibility for late return of item.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:4–303.

PART 4.—RELATIONSHIP BETWEEN PAYOR BANK AND ITS CUSTOMER

§ 28:4–403. Customer's right to stop payment; burden of proof of loss.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:4–404.

§ 28:4–407. Payor bank's right to subrogation on improper payment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:3–801.

Article 5.—LETTERS OF CREDIT

§ 28:5–102. Scope.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:5–103, 28:5–104, 28:5–117.

§§ 28:5–108, 28:5–112.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 28:5–103.

§ 28:5–114. Issuer's duty and privilege to honor; right to reimbursement.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–512.

§ 28:5–116. Transfer and assignment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9–305.

Article 6.—BULK TRANSFERS

§ 28:6–102. "Bulk transfer"; transfers of equipment; enterprises subject to this article; bulk transfers subject to this article.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:1–104.

§ 28:6–103. Transfers excepted from this article.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9–111.

§ 28:6–104. Schedule of property, list of creditors.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:6–107, 28:6–108.

§ 28:6–105. Notice to creditors.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:6–107, 28:6–109.

§ 28:6–107. The notice.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:6–105, 28:6–109.

§ 28:6–108. Auction sales; "auctioneer".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:6–104, 28:6–105.

Article 7.—WAREHOUSE RECEIPTS, BILLS OF LADING AND OTHER DOCUMENTS OF TITLE

PART 1.—GENERAL

§ 28:7–102. Definitions and index of definitions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:2–103.

PART 2.—WAREHOUSE RECEIPTS: SPECIAL PROVISIONS

§ 28:7–204. Duty of care; contractual limitation of warehouseman's liability.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:7–202.

NOTES TO DECISIONS

Negligence

In a case where warehouse was of fire resistant construction, fire alarm system was effectively operating, police and fireman service were near, warehouse was patrolled at fixed intervals by outside guard and iron bars and wire-mesh screening covered the windows on the ground warehouseman was not negligent in failing to provide 24-hour inside guard service or in failing to adequately secure windows and was not liable for damage to stored furniture from fire set by demented policeman after policeman removed wire-mesh screen, but, in any event, arson under the circumstances peculiar to this case was not a foreseeable result of any failure on part of warehouseman. *Union Storage Co., Inc.* v. *J. D. McIntyre, et al.* (D.C. App. 1969, 256 A. 2d 787).

§§ 28:7–205, 28:7–209.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 28:7–202.

§ 28:7–210. Enforcement of warehouseman's lien.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:7–206, 28:7–308.

PART 3.—BILLS OF LADING: SPECIAL PROVISIONS

§ 28:7–303. Diversion; reconsignment; change of instructions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:7–403.

PART 4.—WAREHOUSE RECEIPTS AND BILLS OF LADING: GENERAL OBLIGATIONS

§ 28:7–403. Obligation of warehouseman or carrier to deliver; excuse.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:7–102, 28:7–202, 28:7–503.

PART 5.—WAREHOUSE RECEIPTS AND BILLS OF LADING: NEGOTIATION AND TRANSFER

§ 28:7–501. Form of negotiation and requirements of "due negotiation".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:7–102, 28:9–309.

§ 28:7–502. Rights acquired by due negotiation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:5–114.

§ 28:7–503. Document of title to goods defeated in certain cases.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:7–209, 28:7–403.

§ 28:7–507. Warranties on negotiation or transfer of receipt or bill.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:5–114.

Article 8.—INVESTMENT SECURITIES

PART 1.—SHORT TITLE AND GENERAL MATTERS

§ 28:8–102. Definitions and index of definitions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:5–103, 28:9–105.

§ 28:8–104. Effect of overissue; "overissue".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:8–102, 28:8–404, 28:8–405.

§ 28:8–106. Applicability.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:1–104.

PART 2.—ISSUE—ISSUER

§ 28:8–201. "Issuer".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:8–102.

§ 28:8–204. Effect of issuer's restrictions on transfer.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–908g.

§ 28:8–205. Effect of unauthorized signature on issue.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:8–202.

PART 3.—PURCHASE

§ 28:8–301. Rights acquired by purchaser; "adverse claim"; title acquired by bona fide purchaser.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:8–102, 28:8–320, 28:9–309.

§ 28:8–302. "Bona fide purchaser".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:5–114, 28:8–102.

§ 28:8–303. "Broker".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:8–102.

§ 28:8–304. Notice to purchaser of adverse claims.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:8–310.

§ 28:8–306. Warranties on presentment and transfer.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:5–114.

§ 28:8–308. Indorsement, how made; special indorsement; indorser not a guarantor; partial assignment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:8–312, 28:8–401, 28:8–402, 28:8–404.

§ 28:8–311. Effect of unauthorized indorsement.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:8–306, 28:8–315.

§ 28:8–312. Effect of guaranteeing signature or indorsement.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:8–402.

§ 28:8–319. Statute of frauds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:1–206.

§ 28:8–320. Transfer or pledge within a central depository system.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:8–313.

PART 4.—REGISTRATION

§ 28:8–402. Assurance that indorsements are effective.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:8–102, 28:8–401, 28:8–403.

§ 28:8–403. Limited duty of inquiry.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:8–401, 28:8–404.

§ 28:8–404. Liability and non-liability for registration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:8–311.

Article 9.—SECURED TRANSACTIONS; SALES OF ACCOUNTS, CONTRACT RIGHTS AND CHATTEL PAPER

PART 1.—SHORT TITLE, APPLICABILITY AND DEFINITIONS

§ 28:9–103. Accounts, contract rights, general intangibles and equipment relating to another jurisdiction; and incoming goods already subject to a security interest.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:1–104, 28:9–102. 28:9–401.

§ 28:9–104. Transactions excluded from article.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9–102.

§ 28:9–105. Definitions and index of definitions.

REFERENCE IN TEXT

The reference to section 28:9–196 in subsection (h)(2) is an error. It should be section 28:9–106.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–1209, 38–205, 40–701, 40–901.

§§ 28:9–106, 28:9–107.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 28:9–105.

§ 28:9–109. Classification of goods; "consumer goods"; "equipment"; "farm products"; "inventory".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:2–103, 28:6–102, 28:9–105.

NOTES TO DECISIONS

Classification of goods

Under the provisions of the Uniform Commercial Code, classification of goods is mutually exclusive. *Franklin Investment Co., Inc.* v. *E. P. Homburg* (D.C. App. 1969, 252 A. 2d 95).

Among the same parties and at the same point in time, a product may be classified as both "inventory" and "consumer goods." *Id.*

The manner in which a product is classified under the secured transactions provisions of the Uniform Commercial Code is determined at time of agreement between parties giving rise to security interest, and, as to them, categorization remains unaffected by later transfer of product in question. *Id.*

Inventory

An automobile held by a used car dealer for purpose of sale to buying public in the ordinary course of business was "inventory" and remained so despite subsequent sale of automobile, and, thus, under provision of Uniform Commercial Code a buyer of the automobile in ordinary course of business bought the same free of security interest of dealer's chattel mortgagee. *Franklin Investment Co. Inc.* v. *E. P. Homburg* (D.C. App. 1969, 252 A. 2d 95).

§ 28:9–113. Security interests arising under article on sales.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9–203, 28:9–302.

PART 2.—VALIDITY OF SECURITY AGREEMENT AND RIGHTS OF PARTIES THERETO

§ 28:9–203. Enforceability of security interest; proceeds, formal requisites.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:1–206, 28:4–208.

§ 28:9–204. When security interest attaches; after-acquired property; future advances.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9–312.

§ 28:9–206. Agreement not to assert defenses against assignee; modification of sales warranties where security agreement exists.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9–318.

§ 28:9–207. Rights and duties when collateral is in secured party's possession.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9–501.

§ 28:9–208. Request for statement of account or list of collateral.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9–112.

PART 3.—RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY

§ 28:9–301. Persons who take priority over unperfected security interests; "lien creditor".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9–105, 28:9–312.

§ 28:9–302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9–103, 28:9–303.

§ 28:9–304. Perfection of security interest in instruments, documents, and goods covered by documents; perfection by permissive filing; temporary perfection without filing or transfer of possession.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:8–320, 28:9–302, 28:9–303, 28:9–308, 28:9–312.

§ 28:9–305. When possession by secured party perfects security interest without filing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:8–320, 28:9–302, 28:9–303.

§ 28:9–306. "Proceeds"; secured party's rights on disposition of collateral.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9–105, 28:9–302, 28:9–303, 28:9–308, 28:9–312, 28:9–402, 28:9–502.

NOTES TO DECISIONS

Inventory

An automobile held by a used car dealer for purpose of sale to buying public in the ordinary course of business was "inventory" and remained so despite subsequent sale of automobile, and, thus, under provision of Uniform Commercial Code a buyer of the automobile in ordinary course of business bought the same free of security interest of dealer's chattel mortgagee. *Franklin Investment Co., Inc.* v. *E. P. Homburg* (D.C. App. 1969, 252 A. 2d 95).

§ 28:9–307. Protection of buyers of goods.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:7–503, 28:9–312.

NOTES TO DECISIONS

Classification of goods

Under the provisions of the Uniform Commercial Code, classification of goods is mutually exclusive. *Franklin Investment Co., Inc.* v. *E. P. Homburg* (D.C. App. 1969, 252 A. 2d 95).

Among the same parties and at the same point in time, a product may be classified as both "inventory" and "consumer goods." *Id.*

The manner in which a product is classified under secured transactions provisions of the Uniform Commercial Code is determined at time of agreement between parties giving rise to security interest, and, as to them, categorization remains unaffected by later transfer of product in question. *Id.*

Inventory

An automobile held by a used car dealer for purpose of sale to buying public in the ordinary course of business was "inventory" and remained so despite subsequent sale of automobile, and, thus, under provision of Uniform Commercial Code a buyer of the automobile in ordinary course of business bought the same free of security interest of dealer's chattel mortgagee. *Franklin Investment Co., Inc.* v. *E. P. Homburg* (D.C. App. 1969, 252 A. 2d 95).

§ 28:9–308. Purchase of chattel paper and non-negotiable instruments.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9–306, 28:9–312.

§ 28:9–309. Protection of purchasers of instruments and documents.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9–312.

§ 28:9–310. Priority of certain liens arising by operation of law.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9–102, 28:9–104, 28:9–312.

§ 28:9–312. Priorities among conflicting security interests in the same collateral.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9–301.

§ 28:9–313. Priority of security interests in fixtures.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9–104, 28:9–105, 28:9–302, 28:9–307, 28:9–312.

§ 28:9–314. Accessions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9–204, 28:9–312, 28:9–315.

§ 28:9–315. Priority when goods are commingled or processed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9–312, 28:9–314.

§ 28:9–316. Priority subject to subordination.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9–312.

PART 4.—FILING

PART REFERRED TO IN OTHER SECTIONS

This part is referred to in sections 42–102, 42–104, 42–106, 42–107, 45–701.

§ 28:9–401. Place of filing; erroneous filing; removal of collateral.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9–105.

§ 28:9–403. What constitutes filing; duration of filing; effect of lapsed filing; duties of filing officer.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:9–405.

§ 28:9–404. Termination statement.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 42–104, 42–107.

PART 5.—DEFAULT

§ 28:9–502. Collection rights of secured party.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9–112, 28:9–501.

§ 28:9–504. Secured party's right to dispose of collateral after default; effect of disposition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9–112, 28:9–501, 28:9–503, 28:9–505, 28:9–506.

§ 28:9–505. Compulsory disposition of collateral; acceptance of the collateral as discharge of obligation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9–112, 28:9–501, 28:9–506.

§ 28:9–506. Debtor's right to redeem collateral.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9–112, 28:9–501.

§ 28:9–507. Secured party's liability for failure to comply with this part.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 28:9–112, 28:9–501, 28:9–505.

Article 10.—CONSTRUCTION WITH OTHER LAWS

§ 28:10–104. Laws not repealed.

CODIFICATION

The provisions of subchapter II of chapter 23 of Title 28 of the 1961 edition code, consisting of former sections 28–2321 to 28–2330, have been enacted into law by act Aug. 30, 1964, Pub. L. 88–509 and now are covered by sections 28–2901 to 28–2909.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 28:10–103.

SUBTITLE II.—OTHER COMMERCIAL TRANSACTIONS

Chapter 21.—ASSIGNMENT FOR BENEFIT OF CREDITORS

§ 28–2103. Assignee.

Only a resident of the District of Columbia may be an assignee in an assignment for the benefit of creditors. His asset shall appear in writing in, or at the end of, or indorsed on, the assignment. An assignment is invalid unless acknowledged and recorded within five days after its execution in the land records of the District. A trust created by an assignment shall be executed under the supervision and control of the court having probate jurisdiction. (Aug. 30, 1964, 78 Stat. 668, Pub. L. 88–509, § 1, eff. Jan. 1, 1965; July 29, 1970, Pub. L. 91–358, title I, § 151(a), 84 Stat. 569.)

AMENDMENT

1970—Section 151(a) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 28–2104. Bond of assignee.

Immediately upon the filing for record of an assignment for the benefit of creditors, the assignee shall execute and file in the clerk's office of the court having probate jurisdiction his bond to the United States, in an amount and with security to be approved by a judge thereof, conditioned for the faithful performance of his duties according to law, and the court may from time to time require the assignee, or a trustee appointed in his place, to give additional security when required by the interests of the creditors. (Aug. 30, 1964, 78 Stat. 668, Pub. L. 88–509, § 1, eff. Jan. 1, 1965; July 29, 1970, Pub. L. 91–358, title I, § 151(a), 84 Stat. 569.)

AMENDMENT

1970—Section 151(a) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 28–2105. Nonperformance by assignee—Trustee.

If an assignee named in an assignment for the benefit of creditors fails or refuses to comply with any of the requirements of sections 21–2103 and 21–2104, a judge of the court having probate jurisdiction may, on the application of the assignor or a creditor interested in the assignment, remove the assignee and appoint a trustee in his place to execute the trusts created by the assignment, who shall give bond as the court may require. And the court may accept the resignation of an assignee or trustee, and in case of his resignation, death, or removal from the District, appoint a trustee in his place. The court, for cause shown, on the application of an interested person, may remove an assignee or trustee and appoint a trustee in his place, and make and enforce all orders necessary to put the newly appointed trustee in possession of all property covered by the assignment. Upon the death of an assignee or trustee the court may require his executor or administrator to settle his account and to deliver over to his successor all property belonging to the trust, in default of which the successor may bring suit upon the bond of the deceased assignee or trustee or upon the bond of the executor or administrator, accordingly as the assignee or trustee, executor or administrator is the party in default. (Aug. 30, 1964, 78 Stat. 668, Pub. L. 88–509, § 1, eff. Jan. 1, 1965; July 29, 1970, Pub. L. 91–358, title I, § 151(b), 84 Stat. 569.)

AMENDMENT

1970—Section 151(b) of Act July 29, 1970, Public Law 91–358, amended section by striking out "District Court" and inserting in lieu thereof "court having probate jurisdiction".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 23.—ASSIGNMENT OF CHOSES IN ACTION

§ 28–2305. Contract to assign future salary or wages.

(a) A contract attempting or purporting to transfer or assign salary or wages to be earned by the debtor, if made in the District of Columbia, is invalid and contrary to public policy and unenforceable, and if made outside the District of Columbia, is unenforceable in any court within the District of Columbia.

(b) Whoever, in the District of Columbia demands or receives from a debtor an assignment of salary or wages to be thereafter earned by the debtor, or notifies an employer that he holds an assignment of such salary or wages, upon conviction shall be fined not more than $200 or imprisoned not more than sixty days. Prosecutions under this subsection shall be upon information filed in the Criminal Division of the Superior Court of the District of Columbia by the Corporation Counsel of the District of Columbia or one of his assistants. (Aug. 30, 1964, 78 Stat. 670, Pub. L. 88–509, § 1, eff. Jan. 1, 1965; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (b) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 25.—BONDS AND UNDERTAKINGS

§ 28–2502. Action on bonds in a penal sum containing an avoidance condition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 15–106.

Chapter 27.—BUSINESS HOLIDAYS AND COMPUTATION OF TIME

SUBCHAPTER I.—BUSINESS HOLIDAYS

§ 28–2701. Holidays designated—Time for performing acts extended.

OBSERVANCE OF CERTAIN HOLIDAYS ON MONDAYS

The act of June 28, 1968, Pub. L. 90–363, provides:

(a) Section 6103(a) of title 5, United States Code, is amended to read as follows:

"§ 6103. Holidays

"(a) The following are legal public holidays:

"New Year's Day, January 1.

"Washington's Birthday, the third Monday in February.

"Memorial Day, the last Monday in May.

"Independence Day, July 4.

"Labor Day, the first Monday in September.

"Columbus Day, the second Monday in October.

"Veterans Day, the fourth Monday in October.

"Thanksgiving Day, the fourth Thursday in November.

"Christmas Day, December 25."

(b) Any reference in a law of the United States (in effect on the effective date of the amendment made by subsection (a) of this section) to the observance of a legal public holiday on a day other than the day prescribed for the observance of such holiday by section 6103(a) of title 5, United States Code, as amended by subsection (a), shall on and after such effective date be considered a reference to the day for the observance of such holiday prescribed in such amended section 6103(a).

SEC. 2. The amendment made by subsection (a) of the first section of this Act shall take effect on January 1, 1971.

SUBCHAPTER II.—COMPUTATION OF TIME

§ 28–2711. Daylight-saving time.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(227) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 33.—INTEREST AND USURY

Sec.

28–3307. District of Columbia Council authorized to exempt certain mortgages and loans.

AMENDMENT

1970—Item 28–3307 was added to the chapter analysis by Act Aug. 20, 1970, Pub. L. 91–385, § 2(b).

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 29–843.

§§ 28–3301, 28–3302.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 35–1361.

§ 28–3303. Usury defined.

CROSS REFERENCE

For exemption from this chapter of cooperative associations, see sec. 29–843.

For exemption of institutions of higher education, see § 29–421.

For authority of District of Columbia Council to exempt certain mortgages and loans, see sec. 28–3307.

Corporations created under Chapter 9 of Title 29 prohibited from pleading any statutes against usury in any action, see § 29–904(h).

NOTES TO DECISIONS

Burden of proof

In the case, the court held that the assignee of conditional sale contract and note, that called for "time price" more than 8% greater than balance due, did not establish that transaction was not usurious, and thus did not establish that it was holder in due course, since there was no showing that "finance charge" or "carrying charge" was included to compensate seller for expense other than price of loan. *L. Fuller* v. *Universal Acceptance Corporation* (D.C. App. 1970, 264 A. 2d 506).

Commission as constituting usury

Commission paid by a borrower to a loan broker for obtaining a loan from a third person does not constitute usury. *J. Oliver* v. *United Mortgage Company, Inc., etc.* (D.C. App. 1967, 230 A. 2d 722).

Even if loan broker had advanced his own funds to borrower, but had done so for convenience only and with expectation of reimbursing himself promptly from funds supplied by lender, broker who had retained commission for that service was not liable to borrower for allegedly usurious interest on ground that broker was principal on loan. *Id.*

Borrower was not entitled to recover portion of commission retained by loan broker for arranging loan on ground that transaction was usurious in absence of showing that broker was acting solely as agent of lender. *Id.*

Evidence

A showing that buyer under conditional sale contract was charged $47.88 for use of $300 for 12 months made a prima facie showing of usury, although total sum was labeled "time price", since credit had been prearranged through finance company to which contract was assigned. *L. Fuller* v. *Universal Acceptance Corporation.* (D.C. App. 1970, 264 A. 2d 506).

An usurer cannot conceal his handiwork by avoiding use of term "interest". *Id.*

Forfeiture

In this case the court held that the assignee of a conditional sales contract and note was not entitled to recover "finance charge" or "carrying charge" which exceeded 8% per annum since the assignee did not establish that it was holder in due course and that transaction was not usurious. *L. Fuller* v. *Universal Acceptance Corporation.* (D.C. App. 1970, 264 A. 2d 506).

Jurisdiction

The District of Columbia Court of General Sessions is without jurisdiction to render a declaratory judgment that centralized credit services' finance charges computed at annual rates of 18% and 12% exceeded interest rate which Congress has deemed lawful. *P. Simmons* v. *Central Charge Service, Inc.* (D.C. App. 1970, 269 A. 2d 850).

Nature of defense of usury

Usury as a defense attacks the original transaction as not bona fide and denies assignee of note the status of holder in due course. *Universal Acceptance Corporation* v. *F. Marzullo et ano.* (D.C. App. 1969, 260 A. 2d 90).

Pleading

A complaint against a centralized credit service, which sought to recover all interest paid by plaintiff and persons similarly situated and to which there was a statement attached showing that the defendant service charged 18% interest per annum on certain amounts and 12% interest per annum on other sum without any assertion that the statement constituted plaintiff's account, asked, in essence, for an advisory opinion that the defendant services' finance charges were usurious and should cease, and failed to state a cause of action. *P. Simmons* v. *Central Charge Service, Inc.* (D.C. App. 1970, 269 A. 2d 850).

Tainted transaction

The court held, that in this case the working arrangement between the conditional seller of television set and the assignee of purchasers' note was tainted such that it bore a "badge of fraud" and supported trial judge's ruling in suit by assignee on note that the note was usurious and that assignee could not be given status of holder in due course. *Universal Acceptance Corporation* v. *F. Marzullo et. ano.* (D.C. App. 1969, 260 A. 2d 90).

§ 28–3304. Action to recover usury paid.

NOTES TO DECISIONS

Pleading

A complaint against a centralized credit service, which sought to recover all interest paid by plaintiff and persons similarly situated and to which there was a statement attached showing that the defendant service charged 18% interest per annum on certain amounts and 12% interest per annum on other sum without any assertion that the statement constituted plaintiff's account, asked, in essence, for an advisory opinion that the defendant services' finance charges were usurious and should cease, and failed to state a cause of action. *P. Simmons* v. *Central Charge Service, Inc.* (D.C. App. 1970, 269 A. 2d 850).

Time limitation

An action by makers of a promissory note secured by deeds of trust on Washington, D.C. property to recover usurious portion of interest, would have to be brought within one year of date of payment of interest under District of Columbia Code provision. *J. Katz et al.* v. *Simcha Company, Inc.* (Court of App. Md. 1968, 246 A. 2d 555).

§ 28–3307. District of Columbia Council authorized to exempt certain mortgages and loans.

The District of Columbia Council is authorized from time to time to provide by regulation for the exemption from the provisions of this chapter of any mortgage or loan insured or guaranteed under the National Housing Act or chapter 37 of title 38, United States Code, the interest rate of which is subject to regulation by an officer or agency of the Federal Government. The Council is further authorized to amend or repeal any such regulation at any time, but no such amendment or repeal shall affect any such loan or mortgage lawfully made or committed to be made while such exemption is in effect. (Added Aug. 20, 1970, Pub. L. 91–385, § 2(a), 84 Stat. 828.)

REFERENCE IN TEXT

The National Housing Act, referred to in text, is classified to 12 U.S.C. 1701 et seq.

Chapter 35.—STATUTE OF FRAUDS

§ 28–3502. Special promise to answer for debt or default of another.

NOTES TO DECISIONS

Conflict of laws

For the purpose of determining whether a corporate officer's personal guaranty of work to be performed by the corporation was within the statute of frauds, there was no significant difference between the form of statute in force in District of Columbia and Maryland. *I. R. Friedman* v. *D. Clark* (Md. C. App. 1969, 248 A. 2d 867).

Memorandum

The general rule is that the essential terms of agreement required to be in writing by virtue of statute of frauds must be expressed in writing without resort to parol evidence. *Educational Enterprises, Inc.* v. *P. C. Greening* (D.C. App. 1970, 265 A. 2d 287).

Parol evidence

In this case, the court of appeals held that the trial court properly ruled that parol evidence of employer's policy

regarding bonuses was admissible as aid in interpretation of handwritten agreement, which was signed by employer some nine months after oral promise to pay employee certain salary for a year and which provided that "Earning—Salary and Bonus" for year totaled specified amount, to explain that total compensation for year was limited to specified amount and that employee would not receive an additional amount by way of discretionary Christmas bonus. *Educational Enterprises, Inc.* v. *P. C. Greening* (D.C. App. 1970, 265 A. 2d 287).

Sufficiency of writing

Letter wherein shopping center operators indicated appreciation for company's efforts in assisting operators in their application for proper zoning and stated that in event of success operators would give company opportunity to be major tenant with rental and terms at least equal to that of any other major department store in the center, together with full performance by company of the assistance services, was sufficient writing to satisfy District of Columbia statute of frauds. *City Stores Company* v. *H. M. Ammerman et al.* (1967, 266 F. Supp. 766).

Unilateral contract

Defendants' letter stating that defendants would give plaintiff opportunity to become major tenant in contemplated shopping center with rental and terms at least equal to that of any other major store in center was sufficient evidence of unilateral contract to satisfy District of Columbia statute of frauds. *H. M. Ammerman et al.* v. *City Stores Company* (1968, 394 F. 2d 950, 129 U.S. App. D.C. 325).

§ 28–3504. New promise or acknowledgement[1] of contract—Action against joint contractors.

In an action upon a simple contract, an acknowledgement or promise by words only is not sufficient evidence of a new or continuing contract whereby to take the case out of the operation of the statute of limitations or to deprive a party of the benefit thereof unless the acknowledgement or promise is in writing, signed by the party chargeable thereby. This section does not alter or take away, or lessen the effect of a payment of principal or interest made by any person. In actions against two or more joint contractors, or executors, or administrators, if it appears at the trial, or otherwise, that the plaintiff, though barred by the statute of limitations as to one or more of the defendants, is nevertheless entitled to recover against any other defendant by virtue of a new acknowledgement or promise or otherwise, judgment may be given for the plaintiff as to that defendant. An indorsement or memorandum of a payment written or made upon a promissory note, bill of exchange, or other writing, by or on behalf of the party to whom the payment is to be made, is[2] sufficient proof of the payment so as to take the case out of the operation of the statute of limitations. (Aug. 30, 1964, Pub. L. 88–509, § 1, 78 Stat. 677, eff. Jan. 1, 1965.)

REVISION NOTES

Based on D.C. Code, 1961 ed., § 28–3005 (Mar. 3, 1901, 31 Stat. 1390, ch. 854, § 1271).

The term "real estate" is substituted for "lands, tenements, or hereditaments" to conform with the style of revisions generally.

Changes are made in phraseology.

CROSS REFERENCES

Statutes of limitation, see § 12–301 et seq.

NOTES TO DECISIONS

Evidence—Sufficiency

The court below was correct in concluding, on issue whether clients were estopped by their informal assurances to attorney from asserting limitations as defense in attorney's action to recover fee, that the evidence was insufficient for jury. *R. M. Brown* v. *E. O. Lamb et ano.* (1969, 414 F. 2d 1210, 134 U.S. App. D.C. 314).

[1] So in original. Does not agree with spelling in section catchline as set out in section analysis of this chapter preceding § 28–3501.

[2] So in original. The word "not" preceding the word "sufficient" was probably inadvertently omitted.

TITLE 29.—CORPORATIONS

Chapter 1.—GENERAL PROVISIONS

§ 29–101. Reorganization of corporations existing or doing business prior to January 1, 1902—Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29–238 to 29–240.

§ 29–102. Notice of application for, alteration to, or extension of charter or special privileges.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(228) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29–238 to 29–240.

§ 29–103. Change of name—Procedure—Effect—Notice—Recording.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–101.

§ 29–105. Semiannual publication of financial statement required from foreign insurance companies, building associations, and banking companies, doing business in District—Exemption—Fraternal orders.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 2.—BUSINESS CORPORATIONS (1901)

Sec.
29–228. Liability to District of Columbia for neglect to keep books open.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 43–503.

§ 29–201. Formation—Certificate—Exception—Dealing in real estate.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401 29–101.

§ 29–202. Contents of certificate.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101, 29–203, 29–234.

§§ 29–203 to 29–208.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 26–401, 29–101.

§ 29–209. Authority to do business—Calls—Forfeiture—Notice.

CODIFICATION

The words "this chapter and sections 26–302 and 44–101 to 44–103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the act of 1901. The subchapter consisted of sections 605 to 644. Sections 26–302 and 44–101 to 44–103 of this Code, which are based on sections 641 to 644 of the act of 1901, have no reference to the subject matter of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101.

§ 29–210. Stock to be personal property—Manner of transfer to be prescribed by by-laws—No transfer until previous call is paid.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101, 29–225.

§ 29–211. Liability of stockholders.

CODIFICATION

The words "this chapter and sections 26–302 and 44–101 to 44–103" have been substituted for, and are literal translation of, the words "this subchapter", which appear in the act of 1901. The subchapter consisted of sections 605 to 644. Sections 26–302 and 44–101 to 44–103 of this Code, which are based on sections 641 to 644 of the act of 1901, have no reference to the subject matter of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101.

§ 29–212. Certificate of capital stock paid in—Recording.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101, 29–211.

§ 29–213. Annual report of stock and debts—Verification—Publication.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101, 29–105, 29–214.

§ 29–214. Failure to publish annual report—Mandamus by creditor—Expenses of action.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101.

§ 29–215. Liability of officers for false report.

CODIFICATION

The words "this chapter and sections 26–302 and 44–101 to 44–103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the act of 1901. The subchapter consisted of sections 605 to 644. Sections 26–302 and 44–101 to 44–103 of this Code, which are based on sections 641 to 644 of the act of 1901, have no reference to the subject matter of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101.

§§ 29–216, 29–217.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 26–401, 29–101.

§ 29–218. Dividends not to be declared if corporation is thereby rendered insolvent or capital decreased—Trustees personally liable for debts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101, 29–219.

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§§ 29–219 to 29–222.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 26–401, 29–101.

§ 29–223. Stock book to be kept by treasurer or secretary.

CODIFICATION

The words "this chapter and sections 26–302 and 44–101 to 44–103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the act of 1901. The subchapter consisted of sections 605 to 644. Sections 26–302 and 44–101 to 44–103 of this Code, which are based on sections 641 to 644 of the act of 1901, have no reference to the subject matter of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101.

§ 29–224. Stock books open for inspection.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101, 29–228.

§§ 29–225 to 29–227.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 26–401, 29–101.

§ 29–228. Liability to District of Columbia for neglect to keep books open.

Every company that shall neglect to keep such book open for inspection, as provided in section 29–224, shall forfeit to the District of Columbia the sum of fifty dollars for every day it shall so neglect, to be sued for and recovered in the Superior Court of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1288, ch. 854, § 632; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, §§ 155(c)(1)(F), 169(1), 84 Stat. 570, 590.)

AMENDMENTS

1970—Section 155(c)(1)(F) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

Section 169(1) of Act July 29, 1970, Public Law 91–358 amended section by striking out "to the United States" and inserting in lieu thereof "to the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101.

§ 29–229. Increase or diminution of stock—Extending of business.

CODIFICATION

The words "this chapter and sections 26–302 and 44–101 to 44–103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the Act of 1901. The subchapter consisted of sections 605 to 644. Sections 26–302 and 44–101 to 44–103 of this Code, which are based on sections 641 to 644 of the Act of 1901, have no reference to the subject matter of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101.

§ 29–230. Diminution of capital stock when debts exceed proposed capital.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101.

§ 29–231. Meeting of stockholders for purpose of increase or diminution of capital stock, or change of business—Notice to stockholders.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101, 29–232, 29–240.

§ 29–232. Representatives of two-thirds of stock to be present.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101.

§ 29–233. Certificate by chairman—Contents—Verification.

CODIFICATION

The words "this chapter and sections 26–302 and 44–101 to 44–103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the Act of 1901. The subchapter consisted of sections 605 to 644. Sections 26–302 and 44–101 to 44–103 of this Code, which are based on sections 641 to 644 of the Act of 1901, have no reference to the subject matter of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101.

§ 29–234. Certificate to be filed—Effect.

CODIFICATION

The words "this chapter and sections 26–302 and 44–101 to 44–103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the Act of 1901. The subchapter consisted of sections 605 to 644. Sections 26–302 and 44–101 to 44–103 of this Code, which are based on sections 641 to 644 of the Act of 1901, have no reference to the subject matter of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101.

§ 29–235. Two-thirds vote required.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101.

§ 29–236. Copy of certificate to be evidence.

CODIFICATION

The words "this chapter and sections 26–302 and 44–101 to 44–103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the Act of 1901. The subchapter consisted of sections 605 to 644. Sections 26–302 and 44–101 to 44–103 of this Code, which are based on sections 641 to 644 of the Act of 1901, have no reference to the subject matter of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101.

§ 29–237. Fire insurance companies formed prior to January 1, 1902, may become perpetual.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101.

§ 29–238. Amendment of charter—Procedure—Purposes.

CODIFICATION

The words "this chapter and sections 26–302 and 44–101 to 44–103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the Act of 1901. The subchapter consisted of sections 605 to 644. Sections 26–302 and 44–101 to 44–103 of this Code, which are based on sections 641 to 644 of the Act of 1901, have no reference to the subject matter of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101.

§ 29–239. Stock—Preferred stock authorized—Classes of common—"Charter" defined—Preferences, restrictions, qualifications—Statement thereof on stock.

CODIFICATION

The words "this chapter and sections 26–302 and 44–101 to 44–103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the Act of 1901. The subchapter consisted of sections 605 to 644. Sections 26–302 and 44–101 to 44–103 of this Code, which are based on sections 641 to 644 of the Act of 1901, have no reference to the subject matter of this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101.

NOTES TO DECISIONS

Applicability of provisions of 1901 Act to corporation formed in 1958

Provision which was part of Business Corporation Act of 1901 and required restrictions to be stated on certificate had no application to corporation organized for profit in 1958. *Sankin* v. *5410 Connecticut Avenue Corp., et al.; Benn* v. *Garfield* (1968, 281 F. Supp. 524).

§ 29–240. Sale, lease, or exchange of property or assets as an entirety—Transfer of franchise—Agreement submitted to stockholders—Rights of dissenting stockholders—Procedure—Effect of performance of agreement—Recording.

Every corporation having capital stock and heretofore or hereafter organized or existing under this chapter and sections 26–302 and 44–101 to 44–103, or which has availed or may hereafter avail itself of the provisions of this chapter and sections 26–302 and 44–101 to 44–103 pursuant to sections 29–101, 29–102, may, pursuant to a meeting of its stockholders, held upon notice given in accordance with the provisions of section 29–231, sell, lease, or exchange all of its property and assets as an entirety, including its good will, and franchises howsoever granted and/or acquired, to or with any other such corporation or any other corporation organized or existing under the laws of any state of the United States which is duly authorized by its charter or otherwise to acquire and hold such or similar property, or to or with any natural person. An agreement containing the terms and conditions of the proposed sale, lease, or exchange shall, after approval thereof by a majority of the trustees or directors of such vendor, lessor, or grantor corporation, be submitted to said stockholders at said meeting for their approval; and if approved by the affirmative vote of two-thirds of all the stock outstanding (or, if two or more classes of stock have been issued, of two-thirds of each class, including stock of any class to which the charter denies the right to vote), such agreement shall be executed and its terms and conditions performed. Any stockholder who, at such meeting, voted against the agreement submitted or who shall in writing file his protest at least five days before the holding of such meeting, may within twenty days after such meeting (but not afterwards) make upon such vendor, lessor, or grantor corporation a written demand for payment for his stock; and he shall thereupon be entitled to receive an amount equal to the fair value thereof, unaffected by such sale, lease, or exchange of said corporate property and assets. If such dissenting stockholder and said vendor, lessor, or grantor corporation of which he is a stockholder shall fail to agree upon the fair value of said stock (or if, having agreed, such corporation shall fail to pay or tender the amount thereof), such stockholder shall be entitled to file, within thirty days after such written demand (but not afterwards, against said vendor, lessor or grantor corporation, in the court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000, a petition for an accounting and for the ascertainment of the fair value of his shares without regard to any depreciation or appreciation thereof in consequence of such sale, lease, or exchange; and on the coming in of the answer to said petition, which shall be filed within such reasonable period as the court may fix, the court shall pass an order referring the matter to a commissioner or commissioners agreed upon by the parties, and if the parties do not so agree, then to the auditor of said court, for the purpose of ascertaining such fair value, and such order may prescribe the time and manner of producing evidence; and the award of said commissioner or commissioners (or that of a majority of them) or of said auditor, when confirmed by decree of said court, shall be final and conclusive on all parties, and said vendor, lessor, or grantor corporation shall pay such stockholder the fair value of his shares ascertained as aforesaid, and on receiving such payment or on a tender thereof, said stockholder shall transfer his stock to the said vendor, lessor, or grantor corporation for cancelation, and until said award is paid or tendered, said stockholder shall have a lien for the payment of such award on the proceeds of such sale, lease, or exchange, prior to any distribution by said vendor, lessor, or grantor corporation and said payment and lien may be collected and enforced in the same manner as other decrees and liens are by law enforceable in such court. If the amount awarded said stockholder exceeds the amount offered by the corporation prior to the filing of said suit, costs shall be awarded to said stockholder; otherwise, costs shall be awarded to the corporation. Each party shall have the right of appeal as in other cases in such court. The proceeding by a dissenting stockholder hereunder shall not prevent or delay the execution and performance of any agreement so approved by the affirmative vote of two-thirds of each class of stock: *Provided, however,* That the right granted to a dissenting stockholder hereunder to demand payment for his shares shall cease, if at any time prior to the entry of any decree herein provided for, the defendant corporation shall make it appear to such court that the agreement of sale, lease, or exchange has been rescinded by appropriate corporate action, so that the shares of such dissenting shareholder remain unaffected thereby. Upon the performance of any agreement of sale hereunder of all of the property and assets as an entirety of a corporation (including its good will and franchises), all property, assets, rights, privileges, franchises, and powers of said selling corporation shall be vested in the purchasing corporation or person and shall thereafter be as effectually the property of the purchasing corporation or person as they were of the selling corporation subject to the provisions of this section, and

such purchasing corporation or person shall thereupon immediately file in the office of the recorder of deeds of the District of Columbia proper evidence of such sale, and thereupon said selling corporation shall be dissolved and cease, subject, however, to the provisions of sections 29–715 to 29–718. Nothing contained herein shall affect the provisions of sections 28–1701 to 28–1705, or any of the provisions of chapters 1–10 of title 43, or any amendment or supplement thereof, or of any other law regulating public-utility corporations in the District of Columbia. (Mar. 3, 1901, ch. 854, § 639d, as added Feb. 12, 1931, 46 Stat. 1089, ch. 120, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 168(d)(1), 8 Stat. 589.)

REFERENCES IN TEXT

Chapters 1–10 of title 43 relate to public utilities.

Sections 28–1701 to 28–1705, referred to in this section, were repealed by Act Dec. 30, 1963, 77 Stat. 774, Pub. L. 88–243, § 15(a)(7), and are now covered by section 28:6–101 et seq.

CODIFICATION

The words "this chapter and sections 26–302 and 44–101 to 44–103" have been substituted for, and are a literal translation of, the words "this subchapter", which appear in the Act of 1901. The subchapter consisted of sections 605 to 644. Sections 26–302 and 44–101 to 44–103 of this Code, which are based on sections 641 to 644 of the Act of 1901, have no reference to the subject matter of this chapter.

AMENDMENT

1970—Section 168(d)(1) of Act July 29, 1970, Public Law 91–358 amended section, (A) by striking out "the United States District Court for the District of Columbia" the first time it appears and inserting in lieu thereof "the court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000",

(B) by striking out "the United States District Court for the District of Columbia" the second time it appears and inserting in lieu thereof "such court", and

(C) by striking out "said United States District Court for the District of Columbia" each time it appears and inserting in lieu thereof "such court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–401, 29–101.

Chapter 3.—BOARDS OF TRADE

§§ 29–301 to 29–306.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 29–308.

§ 29–307. Fines—Imposition—Collection.

Such corporation may inflict fines upon any of its members, and collect the same, for breach of the provisions of the constitution or by-laws; but no fine shall in any case exceed twenty-five dollars. Such fines may be collected by action of debt, brought in the name of the corporation, before the Superior Court of the District of Columbia, against the person upon whom the fine shall have been imposed. (Mar. 3, 1901, 31 Stat. 1301, ch. 854, § 708; Feb. 17, 1909, 35 Stat. 623, ch. 134; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–308.

Chapter 4.—INSTITUTIONS OF LEARNING

Sec.
29–421. Exemption of institutions of higher education from usury law.

§ 29–403. Corporate powers.

CROSS REFERENCE

Exemption of institutions of higher education from usury law, see § 29–421.

§ 29–407. Quantity of land which may be held.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–408.

§ 29–413. Quo warranto.

In case any such corporation shall at any time violate or fail to comply with any of the preceding provisions, upon complaint being made to the Superior Court of the District of Columbia, a writ of quo warranto shall issue, and the United States attorney shall prosecute, in behalf of the people, for a forfeiture of all rights and privileges secured by this chapter to such corporation. (Mar. 3, 1901, 31 Stat. 1282, ch. 854, § 586; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(1)(G), 84 Stat. 570.)

AMENDMENT

1970—Section 155(c)(1)(G) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 29–414. Incorporation fee.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29–416, 29–419.

§ 29–415. License to confer degrees—Issuance by Board of Higher Education—Evidence required.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9–220, 29–416, 29–417, 29–419.

§ 29–416. Application for license—Recordation—Use of public school personnel authorized.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9–220, 29–419.

§ 29–417. Revocation of license—Hearing before Board of Higher Education—Review.

A license once issued may be revoked by said Board of Higher Education for noncompliance on the part of any individual or individuals, associations, or incorporated institution so licensed with the provisions of section 29–415. Upon the revocation of any such license it shall be the duty of the secretary of the Board of Higher Education, in the case of an

institution incorporated under the laws of the District of Columbia, to forward a copy of the revocation to the recorder of deeds for the District of Columbia, who shall cause a notation to be placed upon the certificate of incorporation to the effect that its authority to confer degrees has been revoked: *Provided, however,* That thirty days' notice shall first have been given to such individual or individuals, association, or to the trustees, directors, or managers of said institutions, with full opportunity to be heard by said Board of Higher Education at either a public or nonpublic session thereof, as may be desired by such individual or individuals, association, or the institution threatened with revocation of its license, and the evidence upon which said board shall act in the revocation of such license shall be committed to writing under the direction of the board, and upon application therefor a copy thereof furnished to such individual or individuals, association, or the institution whose license has been revoked: *And provided further,* That any party aggrieved by the action of said board in refusing to license or in revoking a license previously granted may appeal as provided in the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510). (Mar. 3, 1901, ch. 854, § 586(d), as added Mar. 2, 1929, 45 Stat. 1504, ch. 523, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Nov. 7, 1966, 80 Stat. 1430, Pub. L. 89–791, title I, § 106; July 29, 1970, Pub. L. 91–358, § 163(a), title I, 84 Stat. 582.)

AMENDMENT

1970—Section 163(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "have the action of the said Board of Higher Education reviewed by the United States District Court for the District of Columbia at an equity term thereof" and inserting in lieu thereof "appeal as provided in the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510)".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9–220, 29–416, 29–419.

§ 29–418. Title of institution not to imply official connection with Government of United States or District of Columbia—Prohibition applicable to nonresidents and foreign corporation conferring degrees in District of Columbia—License not to be denied merely because of use of prohibited words.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9–220, 29–416, 24–419.

§ 29–419. Penalties.

Any person or persons who shall, directly or indirectly, participate in, aid, or assist in the conferring of any degree by any unlicensed individual or individuals, association, or institution, or by any individual or individuals, association, or institution whose license has been revoked, or shall advertise or claim any authority to confer any such degree, except in pursuance of provisions of sections 29–414 to 29–419, or who shall violate the provisions of section 29–418 shall be deemed guilty of a misdemeanor, and upon conviction thereof in the Superior Court of the District of Columbia shall be punished by a fine of not more than $2,000, or imprisonment for not more than two years, or both. (Mar. 3, 1901, ch. 854, § 586f, as added Mar. 2, 1929, 45 Stat. 1505, ch. 523, and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(1)(H), 84 Stat. 570.)

AMENDMENT

1970—Section 155(c)(1)(H) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29–416, 29–418.

§ 29–420. Definitions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9–220.

§ 29–421. Exemption of institutions of higher learning from usury law.

Any institution of higher education located in the District of Columbia and described in the first sentence of section 1201(a) of the Higher Education Act of 1965 (other than District of Columbia Teachers' College, Federal City College, Gallaudet College, and Howard University) may borrow money at such rates of interest as the institution may determine, without regard to the restrictions of any usury law applicable in the District of Columbia, and shall not plead any statutes against usury in any action. (Jan. 5, 1971, Pub. L. 91–650, title IV, § 402, 84 Stat. 1936.)

REFERENCE IN TEXT

Section 1201(a) of the Higher Education Act of 1965, referred to in text, is classified to 20 U.S.C. 1141(a).

CODIFICATION

Section was enacted as a part of the District of Columbia Revenue Act of 1970 and not as a part of subchapter I of chapter 18 of the Act of Mar. 3, 1901, which comprises this chapter.

CROSS REFERENCE

Usury law, see § 28–3303.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

Chapter 5.—RELIGIOUS SOCIETIES

§§ 29–501 to 29–511.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 29–512.

§ 29–514. Procedure for appointment of trustees to receive conveyances.

When such conveyance or devise is made whether by the intervention of trustees or not the court having probate jurisdiction shall, on application of the United States attorney, on behalf of the authorities of any such congregation, have power to appoint trustees, originally, when there are none, or to substitute others, from time to time, in cases of death, refusal, or neglect to act, removal from the District,

or other inability to execute the trust beneficially and conveniently; and the legal title shall thereupon become exclusively vested in the whole number of the trustees and their successors. (R.S., D.C., § 454; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 158(a)(2), 84 Stat. 576.)

AMENDMENT

1970—Section 158(a)(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 7.—DISSOLUTION

Sec.

29–701. Dissolution—Voluntary—Application to court having jurisdiction.
29–719. Involuntary dissolution—Suit by United States Attorney—Petition—Order to show cause.

§ 29–701. Dissolution—Voluntary—Application to court having jurisdiction.

When a majority of the trustees, directors, or other officers having the management of the concerns of any corporation in the District, or stockholders representing not less than one-third of the capital stock of any such corporation, discover that the property and effects of the corporation have been so far reduced, by losses or otherwise, that it will not be able to pay all just demands against it or offer a reasonable security to those who deal with it, or they shall deem it beneficial to the interests of the stockholders that the corporation be dissolved, or when such directors, trustees, or other officers are authorized by a majority of the stockholders to apply for a decree, as hereinafter provided, or when the objects of the corporation have wholly failed or are entirely abandoned or are impracticable, they may apply to the court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000 by petition for the dissolution of said corporation. (Mar. 3, 1901, 31 Stat. 1316, ch. 854, § 768; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, § 168(d)(2), title I, 84 Stat. 589.)

AMENDMENT

1970—Section 168(d)(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 29–715. Trustees for creditors and stockholders.

Upon the dissolution of a corporation by the expiration of its charter, or otherwise, unless other persons be appointed by the stockholders, directors, or trustees of the corporation, or by a decree of the court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000, the directors or trustees acting last before the dissolution, and their survivors, shall be the trustees for the creditors and stockholders of the dissolved corporation, and shall have full power to settle the affairs of the same, to collect its assets and pay its outstanding debts, and divide among its stockholders the money or other property remaining, in proportion to the stock of each stockholder paid up; and in case of the refusal of said trustees or directors, or a majority of them, to act, the said court may, upon the application of any person interested, appoint trustees in their place. (Mar. 3, 1901, 31 Stat. 1318, ch. 854, § 782; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, § 168(d)(2), title I, 84 Stat. 589.)

AMENDMENT

1970—Section 168(d)(2) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–240.

§§ 29–716 to 29–718.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 29–240.

§ 29–719. Involuntary dissolution—Suit by United States Attorney—Petition—Order to show cause.

Whenever the United States attorney for the District of Columbia shall become satisfied that any corporation organized under the laws of said District has been guilty of such misuse, abuse, or nonuser of its corporate powers and franchises, or such violation of law as would authorize and make proper the forfeiture of its charter, corporate powers, and franchises, the said United States attorney shall file in the court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000 a petition setting forth, fully and in detail, the alleged abuse, misuse, or nonuser by reason whereof such forfeiture is sought, which petition shall be supported by affidavits of credible persons; and upon the filing of such petition the said court shall lay a rule requiring such defendant corporation to show cause, within such time as the court may deem proper, why a decree should not issue as prayed in said petition, a copy of which rule and petition shall be served on said corporation by a day therein limited. (Mar. 3, 1901, 31 Stat. 1319, ch. 854, § 786; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, §§ 168(d)(2), 169(2), title I, 84 Stat. 589, 590.)

AMENDMENTS

1970—Section 168(d)(2) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000".

Section 169(2) of Act July 29, 1970, Public Law 91–358, amended section by striking out "in the name of the United States".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–836.

§§ 29–720 to 29–724.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 29–836.

§ 29–725. Injunction against assuming corporate franchise or transacting business not authorized by charter.

The United States attorney may file a bill in said Superior Court of the District of Columbia for the purpose of restraining by injunction any corporation organized under the laws of the District from assuming or exercising any franchise, liberty, or privilege or transacting any business not allowed by its charter or certificate of incorporation or not by law allowed to be assumed or exercised by said corporation, and said United States attorney may file a bill to enjoin any foreign corporation from transacting in the District of Columbia any business not allowed by its charter or certificate of incorporation, or from transacting any business in said District when it has not complied with any provision of this code relating to foreign corporations; and in the same manner may file a bill to restrain any individuals from exercising any corporate rights, privileges, or franchises not granted to them by law; and on the filing of any such bill the said Superior Court of the District of Columbia shall have power to issue an injunction as prayed and to exercise all the powers of a court of equity over the subject-matter of such bill. (Mar. 3, 1901, 31 Stat. 1320, ch. 854, § 793; June 30, 1902, 32 Stat. 534, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, §§ 155(c)(1)(I), 169(3), 84 Stat. 570, 590.)

AMENDMENTS

1970—Section 155(c)(1)(I) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

Section 169(3) of Act July 29, 1970, Public Law 91–358 amended section by striking out "in the name of the United States".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

§§ 29–726 to 29–729.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 29–836.

Chapter 8.—COOPERATIVE ASSOCIATIONS

§ 29–804. Powers of association.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–801.

§ 29–813. Voting—One member, one vote.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29–801, 29–825.

§ 29–814. Proxy voting prohibited.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–825.

§ 29–822. Limitations upon the return on capital.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–831.

§ 29–823. Eligibility and admission to membership.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–801.

§ 29–826. Transfer of shares and membership—Withdrawal.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–825.

§ 29–831. Allocation and distribution of net savings.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–801.

§ 29–836. Dissolution—Methods—Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29–805, 29–831.

§ 29–837. Penalties—Unauthorized use of name "cooperative"—Existing cooperatives.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29–801, 29–844.

§ 29–840. Existing cooperative groups—Acceptance of act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–801.

§ 29–841. Foreign corporations and associations—Admission to do business.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29–801, 29–844.

§ 29–843. Laws not applicable.

No law of the District of Columbia conflicting or inconsistent with any part of this chapter shall, to the extent of the conflict or inconsistency, be construed as applicable to associations formed hereunder; nor shall any law of the District of Columbia inappropriate to the purposes of such associations be so construed; nor shall any of the provisions of sections 574 through 797, both inclusive, of the Act entitled "An Act to establish a Code of Law for the District of Columbia," approved March 3, 1901, be construed as applicable to associations formed hereunder, except as expressly stated in this chapter. Chapter 6 of title 26 (relating to licenses for loaning of money), and chapter 33 of title 28 (relating to interest rates) shall not apply to—

(A) any association formed under this chapter (whose sole function is to arrange and provide financing for its members), and

(B) any members of such association engaged in utility operations

with respect to any contract or agreement between such association and any member relating to a loan of money in connection with such utility operations. (June 19, 1940, 54 Stat. 490, ch. 397, § 43; Aug. 20, 1970, Pub. L. 91–385, § 1, 84 Stat. 828.)

AMENDMENT

Act Aug. 20, 1970, Pub. L. 91–385, § 1, added last sentence as above set out.

CODIFICATION

The above reference to the Code of Law for the District is to the 1901 Code, and covers the entire subject of corporations as printed in that Code, including Banks, Cemeteries, Insurance, and other specific purpose corporations.

The sections of the 1901 Code above referred to appear in this Code under the following section numbers:

26–101, 26–102, 26–301 to 26–336, 26–401 to 26–414 (Banking and Other Financial Institutions);

27–101 to 27–128 (Cemeteries and Crematories);

29–101 to 29–103, 29–201 to 29–237, 29–301 to 29–308, 29–401 to 29–419, 29–501 to 29–512, 29–601 to 29–606, 29–701 to 29–729 (Corporations);

35–101 to 35–108, 35–202 to 35–205, 35–901 to 35–917, 35–1001 to 35–1005, 35–1133, 35–1201, 35–1202 (Insurance);

44–101 to 44–103, 44–210 to 44–212 (Railroads and Other Carriers).

Chapter 9.—BUSINESS CORPORATIONS (1954)

§ 29–902. Definitions.

As used in and for the purposes of this chapter, unless the context otherwise requires—

* * * * *

(r) "The court", except where otherwise specified, means the court in the District of Columbia having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000. (As amended July 29, 1970, Pub. L. 91–358, § 168(c)(1), title I, 84 Stat. 588.)

AMENDMENT

1970—Section 168(c)(1) of Act July 29, 1970, Public Law 91–358, amended subsection (r) to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–903. Purposes.

NOTES TO DECISIONS

Applicability of provisions of 1901 Act to corporation formed in 1958

Provision which was part of Business Corporation Act of 1901 and required restrictions to be stated on certificate had no application to corporation organized for profit in 1958. *Sankin* v. *5410 Connecticut Avenue Corp., et al.; Benn* v. *Garfield* (1968, 281 F. Supp. 524).

§ 29–904. General powers.

CROSS REFERENCE

Usury defined, see § 28–3303.

NOTES TO DECISIONS

Applicability of provisions of 1901 Act to corporation formed in 1958

Provision which was part of Business Corporation Act of 1901 and required restrictions to be stated on certificate had no application to corporation organized for profit in 1958. D.C. Code 1961. *Sankin* v. *5410 Connecticut Avenue Corp, et al.; Benn* v. *Garfield* (1968, 281 F. Supp. 524).

§ 29–905. Defense of ultra vires.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Ultra vires

Nonprofit corporation representing persons engaged in business of selling, installing and servicing air-conditioning equipment was not vested with right to challenge capacity of District of Columbia gas company to enter into contractual arrangement for gas service on the ground that contract was ultra vires. *Association of Fair Competitive Practices in Air Conditioning, Inc.* v. *Public Service Commission of the District of Columbia, et al.* (1967, 372 F. 2d 934, 125 U.S. App. D.C. 361).

§ 29–906a. Reserved name.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–907a. Change of registered office or registered agent.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–907b. Registered agent as an agent for service.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–908a. Issuance of shares of preferred or special classes in series.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–908f. Expenses of organization, reorganization, and financing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–926.

§ 29–908g. Certificates representing shares.

NOTES TO DECISIONS

Stock voting agreement

Agreement whereby majority stockholder and minority stockholder agreed that their voting power should be equal but which was not endorsed upon stock certificates was not invalid. *Sankin* v. *5410 Connecticut Avenue Corp., et al.; Benn* v. *Garfield* (1968, 281 F. Supp. 524).

Parties to fraudulent scheme to induce minority stockholder to pay inflated price for majority stockholder's stock and who knew of agreement between majority stockholder and minority stockholder for equal voting power in corporate affairs were not entitled to claim that voting agreement was invalid because of stock certificates' failure to contain such restriction. *Id.*

Statutory provision that stock certificates must contain statement as to restrictions thereon was designed for protection of innocent purchasers of stock and could not be used as defense to suit by minority stockholder against those who were parties to fraudulent scheme whereby minority stockholder paid inflated price for majority stockholder's stock. *Id.*

§ 29–911. Voting of shares.

NOTES TO DECISIONS

Stock voting agreement

Agreement whereby majority stockholder and minority stockholder agreed that their voting power should be equal but which was not endorsed upon stock certificates was not invalid. *Sankin* v. *5410 Connecticut Avenue Corp., et al.; Benn* v. *Garfield* (1968, 281 F. Supp. 524).

Parties to fraudulent scheme to induce minority stockholder to pay inflated price for majority stockholder's stock and who knew of agreement between majority stockholder and minority stockholder for equal voting power in corporate affairs were not entitled to claim that voting agreement was invalid because of stock certificates' failure to contain such restriction. *Id.*

Statutory provision that stock certificates must contain statement as to restrictions thereon was designed for protection of innocent purchasers of stock and could not be used as defense to suit by minority stockholder against those who were parties to fraudulent scheme whereby minority stockholder paid inflated price for majority stockholder's stock. *Id.*

§§ 29–917, 29–917a.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 29–926.

§ 29–921. Incorporators.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–921b. Filing of articles of incorporation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–921g. Procedure to amend articles of incorporation before acceptance of subscriptions to shares.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Amendment of articles by original incorporators

Where payment of subscription for all corporate stock was made to the promoter but the corporate minute book showed no action by board of directors with respect to subscription, original incorporators could amend articles of incorporation to increase capital stock and amendment was not governed by provision for amendment of articles of incorporation by board of directors after acceptance of subscription. *Sankin* v. *5410 Connecticut Avenue Corp., et al.; Benn* v. *Garfield* (1968, 281 F. Supp. 524).

§ 29–921h. Procedure to amend articles of incorporation after acceptance of subscription to shares.

NOTES TO DECISIONS

Amendment of Articles by original incorporators

Where payment of subscription for all corporate stock was made to the promoter but the corporate minute book showed no action by board of directors with respeect to subscription, original incorporators could amend articles of incorporation to increase capital stock and amendment was not governed by provision for amendment of articles of incorporation by board of directors after acceptance of subscription. *Sankin* v. *5410 Connecticut Avenue Corp, et al.; Benn* v. *Garfield* (1968, 281 F. Supp. 524).

§ 29–923a. Filing of articles of amendment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–924. Redemption and cancellation of shares.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–924b. Cancellation of reacquired shares.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–925. Reduction of stated capital in certain cases.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–925a.

§ 29–927d. Articles of merger or consolidation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–927g. Merger or consolidation of domestic and foreign corporations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–927h. Merger of parent corporation and wholly owned subsidiary.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–930. Voluntary dissolution of corporation by its incorporators.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–930c. Filing of statement of intent to dissolve.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–930e. Proceedings after filing of statement of intent to dissolve.

After the filing by the Commissioners of a statement of intent to dissolve—

(a) The corporation shall proceed to collect its assets, convey and dispose of such of its properties as are not to be distributed in kind to its shareholders, pay, satisfy, and discharge its liabilities and obligations and do all other acts required to liquidate its business and affairs, and, after paying or adequately providing for the payment of all its obligations, distribute the remainder of its assets, either in cash or in kind, among its shareholders according to their respective rights and interests.

(b) The corporation, at any time during the liquidation of its business and affairs, may make application to the court to have the liquidation continued under the supervision of the court as provided in this chapter. (June 8, 1954, 68 Stat. 214, ch. 269, § 81; July 29, 1970, Pub. L. 91–358, title I, § 168(c)(2), 84 Stat. 589.)

AMENDMENT

1970—Section 168(c)(2) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 29–930h. Filing of statement of revocation of voluntary dissolution proceedings.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–930k. Filing of articles of dissolution.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–931. Involuntary dissolution.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–931a. Venue and process.

Every action for the involuntary dissolution of a corporation on the grounds hereinbefore provided shall be commenced by the Commissioners in the court. Summons shall issue and shall be served as in other civil actions. In case a return is made thereon that no officer or agent of such corporation can be found within the territorial limits of the District of Columbia, then the Commissioners shall cause publication to be made in some newspaper of general circulation published in the District of Columbia, containing a notice of the pendency of such action, the title of the court, the names of the parties thereto, and the date on or after which default may be entered. The Commissioners shall cause a copy of such notice to be mailed by registered mail to the corporation at its registered office within ten days after the first publication thereof. The certificate of the Commissioners of the mailing of such notice shall be prima facie evidence thereof. Such notice shall be published at least once each week for three successive weeks, and the first publication thereof may begin at any time after the summons has been returned. Unless a corporation shall have been served with summons, no default shall be taken against it earlier than thirty days after the first publication of such notice. The cost of publication of such notice shall be paid by the Commissioners, unless the decree is against the corporation and such cost is collected from it. (June 8, 1954, 68 Stat. 217, ch. 269, § 89; July 29, 1970, Pub. L. 91–358, title I, § 168(c)(2), 84 Stat. 589.)

AMENDMENT

1970—Section 168(c)(2) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–931b. Jurisdiction of court to liquidate assets and business of corporation.

(a) The court shall have full power to liquidate the assets and business of a corporation—

(1) upon application by a corporation which has filed a statement of intent to dissolve, as provided in this chapter, to have its liquidation continued under the supervision of the court;

(2) when an action has been commenced by the Commissioners to dissolve a corporation and it is made to appear that liquidation of its business and affairs should precede the entry of a decree of dissolution;

(3) in an action by a shareholder when it is established that the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock, and that irreparable injury to the corporation is being suffered or is threatened by reason thereof;

(4) in an action by a shareholder when it is established that the shareholders are deadlocked in voting power and for that reason have been unable at two consecutive annual meetings to elect successors to directors whose terms had expired.

(b) Proceedings under this section shall be brought in the court.

(c) It shall not be necessary to make shareholders parties to any such action or proceeding unless relief is sought against them personally. (June 8, 1954, 68 Stat. 217, ch. 269, § 90; July 23, 1959, 73 Stat. 241, Pub. L. 86–106, § 11; July 29, 1970, Pub. L. 91–358, title I, § 168(c)(2), 84 Stat. 589.)

AMENDMENT

1970—Section 168(c)(2) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 29–931h. Filing of decree of dissolution.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–932. Annual report of domestic corporation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–933. Admission of foreign corporation—Exemption from certificate requirement in certain cases—Service of process on exempt corporations—Rules and regulations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(229 and 230) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (e)(2) and (5) as to fixing fees relating to process, and making rules and regulations relating to service of process, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 29–933d. Application for certificate of authority.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–933e. Filing of documents on application for certificate of authority.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–933h. Change of registered office or registered agent of foreign corporation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–933i. Service of process on foreign corporation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Judgment of recovery against garnishee

In this case where garnishee appeared and opposed, the motion on jurisdictional grounds, the judgment creditor's motion for judgment of recovery, though garnishee had previously failed to answer the interrogatories and where the garnishee alleged that nothing was owed to judgment debtor when writs were received and that judgment debtor thereafter left his job with the garnishee, judgment of recovery should not be entered if, on further proceedings, it is shown that no additional wages became due judgment debtor from garnishee between receipt of writs and termination of debtor's employment and if there were otherwise cause to permit answer to be filed. *Metropolitan Roofing and Sheet Metal Co., Inc.* v. *Franklin Investment Co., Inc.* (D.C. App. 1969, 256 A. 2d 913).

Transacting business

Alabama insurance corporation which received insurance applications at its principal office in Alabama and for the past ten years mailed contracts of insurance to District of Columbia residents whose applications were accepted, which employed independent adjusting firm in the District on case by case basis to investigate and attempt settlement of claims against its policyholders, and which also employed attorneys to defend actions against its policyholders was maintaining a "regular, continuous course of business" in the District under statute and was subject to in personam jurisdiction by delivery of copy of complaint to District commissioners. *J. V. Stevens etc.* v. *American Service Mutual Insurance Co.; American Service Mutual Insurance Co.* v. *J. V. Stevens etc.* (D.C. App. 1967, 234 A. 2d 305).

Absence of tangible indicia of corporate presence does not automatically mean that corporation is immune from service of process if it is, in fact, carrying on regular course of business in jurisdiction. *Id.*

§ 29–933j. Amendment to articles of incorporation of foreign corporation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–933k. Merger of foreign corporation authorized to transact business in the District.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–933*l*. Amended certificate of authority.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–933m. Annual report of foreign corporations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–934. Withdrawal of foreign corporation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–934a. Filing of application for withdrawal.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–934b. Revocation of certificate of authority.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–934c. Issuance of certificate of revocation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–934d. Effect of revocation or withdrawal upon actions and contracts.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–934f. Transacting business without certificate of authority.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–935. Commissioners—Duties and functions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(231 and 232) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (c) and (f) in the particulars outlined in pars. 231 and 232, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–1093.

§ 29–936. Fees and license taxes, and charges.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(233) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (b)(21) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 29–938. Proclamation of revocation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–938b. Correction of error in proclamation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–938c. Reservation of name of proclaimed corporation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–938d. Reinstatement of proclaimed corporations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–941. Effect of nonpayment of fees.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–945. Waiver of notice.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29–910a, 29–916g.

§ 29–948. Appeal from Commissioners.

(a) If the Commissioners shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved by the Commissioners before the same shall be filed in their office, they shall, within ten days after the delivery thereof to them give written notice of their disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the court, by filing with the clerk of such court a petition setting forth a copy of the articles or other documents sought to be filed and a copy of the written disapproval thereof by the Commissioners; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Commissioners or direct them to take such action as the court may deem proper.

(b) If the Commissioners shall revoke the certificate of authority to transact business in the District of any foreign corporation, pursuant to the provisions of this chapter, such foreign corporation, may likewise appeal to the court, by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to transact business in the District and a copy of the notice of revocation given by the Commissioners; whereupon the matter shall be tried de novo by the court and the court shall either sustain the action of the Commissioners or direct them to take such action as the court may deem proper.

(c) Appeals from all final orders and judgments entered by the court under this section may be taken by either party to the proceeding within sixty days after service on the party of a copy of the order or judgment of the court. (June 8, 1954, 68 Stat. 234, ch. 269, § 137; July 29, 1970, Pub. L. 91–358, §§ 163(b), 168(c)(3), title I, 84 Stat. 582, 589.)

AMENDMENTS

1970—Section 163(b) of Act July 29, 1970, Public Law 91–358, amended subsection (c) to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

Section 168(c)(3) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court" each time it appears.

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–949. Certificates and certified copies of certain documents to be received in evidence.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–951. Forms to be furnished by Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–952. Reincorporation or incorporation of existing corporations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29–908g, 29–952a.

§ 29–953. Transfer of duties of Recorder of Deeds.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–902.

Chapter 10.—NONPROFIT CORPORATIONS

§ 29–1002. Definitions.

* * * * *

(k) "The court", except where otherwise specified, means the court in the District of Columbia having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000. (As amended, July 29, 1970, Pub. L. 91–358, § 168(e)(1), title I, 84 Stat. 589.)

AMENDMENT

1970—Section 168(e)(1) of Act July 29, 1970, Public Law 91–358, amended subsection (k) to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1006. Defense of ultra vires.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1008. Reserved name.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1010. Change of registered office or registered agent.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1011. Registered agent as an agent for service.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1031. Filing of articles of incorporation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1037. Filing of articles of amendment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1042. Articles of merger or consolidation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1045. Merger or consolidation of domestic and foreign corporations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1050. Revocation of voluntary dissolution proceedings.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1052. Filing of articles of dissolution.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1053. Involuntary dissolution.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1054. Venue and process.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1055. Jurisdiction of court to liquidate assets and affairs of corporation.

The court shall have full power to liquidate the assets and affairs of a corporation—

(a) in any action by a member or director when it is made to appear—

(1) that the directors are deadlocked in the management of the corporate affairs and that irreparable injury to the corporation is being suffered or is threatened by reason thereof, and either that the members are unable to break the deadlock or there are no members having voting rights; or

(2) that the acts of the directors or those in control of the corporation are illegal, oppressive, or fraudulent; or

(3) that the corporate assets are being misapplied or wasted; or

(4) that the corporation is unable to carry out its purposes;

(b) in an action by a creditor—

(1) when the claim of the creditor has been reduced to judgment and an execution thereon has been returned unsatisfied and it is established that the corporation is insolvent; or

(2) when the corporation has admitted in writing that the claim of the creditor is due and owing and it is established that the corporation is insolvent;

(c) upon application by a corporation to have its dissolution continued under the supervision of the court;

(d) when an action has been commenced by the Commissioners to dissolve a corporation and it is made to appear that liquidation of its affairs should precede the entry of a decree of dissolution;

(e) it shall not be necessary to make directors or members parties to any such action or proceeding unless relief is sought against them personally.

(Aug. 6, 1962, 76 Stat. 287, Pub. L. 87–569, § 55; July 29, 1970, Pub. L. 91–358, title I, § 168(e)(2), 84 Stat. 589.)

AMENDMENT

1970—Section 168(e)(2) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "the court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 29–1061. Filing of decree of dissolution.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1064. Admission of foreign corporation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1068. Application for certificate of authority.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1069. Filing of application for certificate of authority.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1072. Change of registered office or registered agent of foreign corporation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1073. Service of process on foreign corporation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1074. Amendment to articles of incorporation of foreign corporation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1076. Amended certificate of authority.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1077. Withdrawal of foreign corporation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1078. Filing of application for withdrawal.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1079. Revocation of certificate of authority.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1080. Issuance of certificate of revocation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1082. Conducting affairs without certificate of authority.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1083. Annual report of domestic and foreign corporations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1084. Filing of annual report of domestic and foreign corporations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1086. Proclamation of revocation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1088. Correction of error in proclamation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1089. Reservation of name of proclaimed corporation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1090. Reinstatement of proclaimed corporations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1091. Penalties imposed upon corporations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1092. Fees for filing documents and issuing certificates.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(234) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (s) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 29–1093. Commissioners: Duties and functions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(235) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (e) relating to regulations and penalties as set out in par. 235, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 29–1094. Appeal from commissioners.

(a) If the Commissioners shall fail to approve any articles of incorporation, amendment, merger, consolidation, or dissolution, or any other document required by this chapter to be approved by the Commissioners before the same shall be filed in their office, they shall, within ten days after the delivery thereof to them, give written notice of their disapproval to the person or corporation, domestic or foreign, delivering the same, specifying the reasons therefor. From such disapproval such person or corporation may appeal to the court by filing with the clerk of such court a petition setting forth a copy of the articles or other document sought to be filed

and a copy of the written disapproval thereof by the Commissioners; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Commissioners or direct them to take such action as the court may deem proper.

(b) If the Commissioners shall revoke the certificate of authority to conduct affairs in the District of any foreign corporation, pursuant to the provisions of this chapter, such foreign corporation may likewise appeal to the court by filing with the clerk of such court a petition setting forth a copy of its certificate of authority to conduct affairs in the District and a copy of the notice of revocation given by the Commissioners; whereupon the matter shall be tried de novo by the court, and the court shall either sustain the action of the Commissioners or direct them to take such action as the court may deem proper.

Appeals from all final orders and judgments entered by the court under this section in review of any ruling or decision of the Commissioners may be taken as in other civil actions. (Aug. 6, 1962, 76 Stat. 302, Pub. L. 87–569, § 94; July 29, 1970, Pub. L. 91–358, title I, § 168(e)(3), 84 Stat. 589.)

AMENDMENT

1970—Section 168(e)(3) of Act July 29, 1970, Public Law 91–358, amended section by striking out "the United States District Court for the District of Columbia" and inserting in lieu thereof "the court" each place it appears.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1095. Certificates and certified copies to be received in evidence.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1096. Forms to be furnished by commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1099d. Filing of statement of election to accept this chapter.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 29–1099f. Actions to be in name of District of Columbia.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TITLE 30.—DOMESTIC RELATIONS

Chapter 1.—MARRIAGE

§ 30–101. Prohibitions—Marriages void ab initio.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–903.

§ 30–103. Marriages void from date of decree—Age of consent.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–903.

NOTES TO DECISIONS

Knowledge of mental condition

Woman who knew of man's commitment to mental institution at time of marriage was not entitled to annulment and the annulment should have been granted to the man. *A. D. Martin* v. *L. P. Martin* (D.C. App. 1968, 240 A. 2d 363).

§ 30–104. Annulment—Party plaintiff—Next friend—Capable person who knowingly contracted illegal marriage.

NOTES TO DECISIONS

Latches and estoppel

Statutory estoppel is not applicable in an action for an annulment of marriage on the ground that plaintiff's divorce from prior marriage had not become legally effective, at the time of second marriage. *T. Taylor* v. *F. C. Taylor* (D.C. App. 1967, 233 A. 2d 43).

§ 30–106. Persons authorized to perform marriage ceremony.

For the purpose of preserving the evidence of marriages in the District, every minister of the gospel appointed or ordained according to the rites and ceremonies of his church, whether his residence be in the District or elsewhere in the United States or the Territories, may be authorized by any judge of the Superior Court of the District of Columbia to celebrate marriages in the District. And marriages may be celebrated in the District by any judge or justice of any court of record: *Provided, however,* That marriages of members of any church or religious society which does not by its custom require the intervention of a minister for the celebration of marriages may be solemnized in the manner prescribed and practiced in any such society, the license in such case to be issued to, and returns to be made by, a person appointed by such church or religious society for that purpose. The clerk of the Superior Court of the District of Columbia and such deputy clerks of the court as may, in writing, be designated by the clerk of the court and approved by the chief judge, are authorized to celebrate marriages in the District of Columbia. (Mar. 3,1901, 31 Stat. 1392, ch. 854, § 1288; Apr. 23, 1904, 33 Stat. 297, ch. 1490, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 264, Pub. L. 89–493, § 13 (a) (b); July 29, 1970, Pub. L. 91–358, title I, § 155 (a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 30–107, 30–112.

§ 30–108. Celebration of marriage without license—Penalty.

No person authorized hereby to celebrate the rites of marriage shall do so in any case without first having delivered to him a license therefor addressed to him issued from the clerk's office of said Superior Court of the District of Columbia under a penalty of not more than five hundred dollars, in the discretion of the court, to be recovered upon information in the Superior Court of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1290; June 30, 1902, 32 Stat. 543, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 5, 1966, 80 Stat. 264, Pub. L. 89–493, § 13(a); July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 30–107.

§ 30–109. Issuance of license.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 30–120.

§ 30–110. Duty of clerks before issuing license—Perjury.

It shall be the duty of the clerk of the Superior Court of the District of Columbia before issuing any license to solemnize a marriage to examine any applicant for said license under oath and to ascertain the names, ages, and color of the parties desiring to marry, and if they are under age the names of their parents or guardians, whether they were previously married, whether they are related or not, and if so, in what degree, which facts shall appear on the face of the application, of which the clerk shall provide a printed form, and any false swearing in regard to such matters shall be deemed perjury. (Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1291; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62

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Stat. 991 ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 264, Pub. L. 89–493, § 13(a); July 29, 1970, Pub. L. 91–358, Title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 30–112. Form of license—Return—Coupon.

Licenses to perform the marriage ceremony shall be addressed to some particular minister, magistrate, or other person authorized by section 30–106 to perform or witness the marriage ceremony and shall be in the following form:

Number ———.

To ——— ———, authorized to celebrate (or witness) marriages in the District of Columbia, greeting:

You are hereby authorized to celebrate (or witness) the rites of marriage between ——— ———, of ———, and ——— ———, of ———, and having done so, you are commanded to make return of the same to the clerk's office of the Superior Court of the District of Columbia within ten days under a penalty of fifty dollars for default therein.

Witness my hand and seal of said court this——— day of ———, anno Domini ———.

——— ——— *Clerk.*

By ——— ——— *Assistant Clerk.*

Said return shall be made in person or by mail on a coupon issued with said license and bearing a corresponding number therewith within ten days from the time of said marriage, and shall be in the following form:

Number ———.

I, ——— ———, who have been duly authorized to celebrate (or witness) the rites of marriage in the District of Columbia, do hereby certify that, by authority of a license of corresponding number herewith, I solemnized (or witnessed) the marriage of ——— ——— and ——— ———, named therein, on the ——— day of ———, at ———, in said District.

A second coupon, of corresponding number with the license, shall be attached to and issued with said license, to be given to the contracting parties by the minister or other person to whom such license was addressed, and shall be in the following form:

Number ———.

I hereby certify that on this ——— day of ———, at ———, ——— ——— and ——— ——— were by (or before) me united in marriage in accordance with the license issued by the clerk of the Superior Court of the District of Columbia.

Name ——— ———,

Residence ———.

(Mar. 3, 1901, 31 Stat. 1392, ch. 854, § 1293; June 30, 1902, 32 Stat. 543, ch. 1329; Apr. 23, 1904, 33 Stat. 297, ch. 1490, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 264, Pub. L. 89–493, § 13(a); July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 30–113. Failure to make return—Penalty.

Any minister or other person, having solemnized or witnessed the rites of marriage under the authority of a license issued as aforesaid, who shall fail to make return as therein required, shall be liable to a penalty of fifty dollars upon conviction of said failure upon information in the Superior Court of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1393, ch. 854, § 1294; Apr. 23, 1904, 33 Stat. 298, ch. 1490, § 3; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

CODIFICATION

The words "of said district", following "Superior Court of the District of Columbia", have been omitted as unnecessary.

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 30–118. Marriage license applications as public records and open to inspection—Accessibility.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 30–123.

§ 30–119. Premarital examinations—Statements regarding blood test to be filed with license application.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 30–120 to 30–123.

§ 30–120. Waiver of requirement for blood test and waiting period in certain cases.

If a judge of the Superior Court of the District of Columbia determines that public policy or the physical condition of either of the persons applying for a marriage license requires the intended marriage to be celebrated without delay, he may waive the provisions of sections 30–109 and 30–119, and a license may be issued without regard to such sections. (Oct. 15, 1966, 80 Stat. 959, Pub. L. 89–682, § 3; July 7, 1967, Pub. L. 90–53, § 1, 81 Stat. 122; July 29, 1970, Pub. L. 91–358, § 155(a), 84 Stat. 570.)

AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

1967—Act of July 7, 1967, amended section by striking "United States District Court for the District of Columbia" and inserting in lieu "District of Columbia Court of General Sessions".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATE

Section as effective upon expiration of 90 days after date of its enactment (Oct. 15, 1966), see § 7 of act of Oct. 15, 1966, set out as a note under § 30–118.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 30–123.

§§ 30–121, 30–122.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 30–123.

§ 30–123. Penalties for wrongful acts or failure to comply with sections 30–118 to 30–123.

Whoever—

(1) knowingly divulges, other than in accordance with the provisions of sections 30–118 to 30–123, any information, derived from the laboratory blood test required by section 30–119, relating to any person suffering, or suspected to be suffering from, syphilis,

(2) knowingly misrepresents any fact called for by the statement required by such section, or knowingly falsifies any material fact in connection with the laboratory blood test required by such section,

(3) knowingly issues a marriage license without having received the statement required under such section or an order of the Superior Court of the District of Columbia issued under section 30–120, or

(4) otherwise fails to comply with any other provision of sections 30–118 to 30–123.

shall be imprisioned for not more than six months, or fined not more than $250, or both. Prosecutions for violations of this section shall be conducted by the Corporation Counsel for the District of Columbia. (Oct. 15, 1966, 80 Stat. 960, Pub. L. 89–682, § 6; July 7, 1967, Pub. L. 90–53, § 1, 81 Stat. 122; July 29, 1970, Pub. L. 91–358, § 155(a), 84 Stat. 570.)

AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

1967—Act of July 7, 1967, amended section by striking "United States District Court for the District of Columbia", and inserting in lieu "District of Columbia Court of General Sessions".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATE

Section as effective upon expiration of 90 days after date of its enactment (Oct. 15, 1966), see § 7 of act Oct. 15, 1966, set out as a note under § 30–118.

Chapter 2.—PROPERTY RIGHTS

§ 30–216. Release of dower.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–501.

Chapter 3.—UNIFORM SUPPORT

§ 30–301. Purpose—Effective date.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1101.

NOTES TO DECISIONS

Constitutionality

The Uniform Reciprocal Enforcement of Support Act, this chapter, requiring husband, wife, father, mother, or adult child of recipient of public assistance to be responsible, according to his ability to pay, for support of such recipient, does not deny due process. *C. Groover* v. *Essex County Welfare Board* (D.C. App. 1970, 264 A. 2d 143).

Fact that county welfare board sought to collect support for mother only from one son under this chapter requiring husband, wife, father, mother, or adult child of recipient of public assistance to be responsible according to his ability to pay, for support of such recipient, and not from other children, who live in other jurisdictions, and who are allegedly able to contribute, does not render application of such chapter to son a denial of equal protection. *Id.*

§ 30–302. Definitions.

As used in this chapter, unless the context requires otherwise—

* * * * *

(d) "Court" means the Family Division of the Superior Court and, when the context requires, means the court of any other State as defined in a substantially similar reciprocal law.

* * * * *

(As amended, July 29, 1970, Pub. L. 91–358, title I, § 159(f)(1), 84 Stat. 578.)

AMENDMENT

1970—Section 159(f)(1) of Act July 29, 1970, Public Law 91–358 amended subsection (d) by striking out "Domestic Relations Branch of the Municipal Court for the District of Columbia" and inserting in lieu thereof "Family Division of the Superior Court."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1101.

NOTES TO DECISIONS

Duration of support

Father's motion to vacate and set aside all support orders entered against him, under Uniform Reciprocal Enforcement of Support Act, was premature where filed before child's 18th birthday, and judgment under Act required current support payments until child reached 18. *W. Howze* v. *E. Howze* (D.C. App. 1967, 225 A. 2d 477).

Law governing

District of Columbia judgment, under Uniform Reciprocal Enforcement of Support Act, requiring husband to make support payments until child reaches 18, was not in conflict with doctrines of res judicata or full faith and credit regarding Michigan divorce decree which required payments only until age 17. *W. Howze* v. *E. Howze* (D.C. App. 1967, 225 A. 2d 477).

§ 30–303. Remedies additional to those now existing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1101.

NOTES TO DECISIONS

Additional support

Under Uniform Reciprocal Enforcement of Support Act, wife, who has obtained foreign divorce, may petition for additional support after divorce decree has been fully satisfied. *W. Howze* v. *E. Howze* (D.C. App. 1967, 225 A. 2d 477).

Decision determining father's continued liability under judgment previously entered under Uniform Act and requiring support payments until Michigan child should reach 18, would not impair right of mother, who had obtained Michigan divorce, to petition Michigan court for further support under Uniform Act after child reached 18. *Id.*

Imprisonment for contempt

The intermediate appellate court was quite aware that order of imprisonment must take into account the financial ability of the contemnor to comply with the terms of a court order, and that the appellant failed to make a showing of lack of financial ability in this case. *J. R.*

Scott v. *I. R. Scott* (1967, 382 F. 2d 461, 127 U.S. App. D.C. 245).

Money judgment

Money judgment was proper means of collecting arrears in payments due under foreign decree for support of child. *W. Howze* v. *E. Howze* (D.C. App. 1967, 225 A. 2d 477).

§ 30–304. Extent of duties of support.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1101.

NOTES TO DECISIONS

Reliance on divorce decree

Evidence supported finding that divorce decree was no longer being relied upon to impose a duty of support on father, where order at issue was granted in response to mother's petition to increase support payments for her child until child reached age 18, and that order, though not specific, was intended to continue at lease until child was 17 years, 3 months old, and more likely until her 18th birthday, and, under either view, reliance was clearly placed on District of Columbia support laws and not on 1961 divorce decree which provided for support only until child reached age 17. *W. Howze* v. *E. Howze* (1967, 385 F. 2d 986, 128 U.S. App. D.C. 204).

Support duties

Under Uniform Reciprocal Enforcement of Support Act, enforceable duties of support include those imposed or imposable under laws of any state where alleged obligor was present during period for which support was sought. *W. Howze* v. *E. Howze* (D.C. App. 1967, 225 A. 2d 477).

§ 30–305. Remedies of a State furnishing support or institutional care.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1101.

§ 30–306. How duties of support are enforced, jurisdiction in domestic relations court—Proceedings.

Proceedings to enforce duties of support initiated by the District of Columbia shall be commenced by the filing of a complaint irrespective of the relationship between the plaintiff and defendant. Jurisdiction of all proceedings under this chapter is vested in the Family Division of the Superior Court of the District of Columbia which shall have all power and authority heretofore vested in the Domestic Relations Branch of the District of Columbia Court of General Sessions. (July 10, 1957, 71 Stat. 286 Pub. L. 85–94, § 6; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, § 165(d), title I, 84 Stat. 586.)

AMENDMENT

1970—Section 165(d) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1101.

§§ 30–307 to 30–309.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 11–1101.

§ 30–310. Duty of court when District of Columbia is initiating State.

SECTIONS REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–1101, 30–314.

§§ 30–311 to 30–314.

SECTION REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 11–1101.

§ 30–315. Order of support—Bond—Contempt.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1101.

NOTES TO DECISIONS

Abuse of discretion

Award requiring son, pursuant to Uniform Reciprocal Enforcement of Support Act, this chapter, obligating husband, wife, father, mother or adult child of recipient of public assistance to be responsible, according to his ability to pay, for support of such recipient, to pay $30 every two weeks toward maintenance and support of his mother was not abuse of discretion. *C. Groover* v. *Essex County Welfare Board* (D.C. App. 1970, 264 A. 2d. 143).

Imprisonment for contempt

The intermediate appellate court was quite aware that order of imprisonment must take into account the financial ability of the contemnor to comply with the terms of a court order, and that the appellant failed to make a showing of lack of financial ability in this case. *J. R. Scott* v. *I. R. Scott* (1967, 382 F. 2d 461, 127 U.S. App. D.C. 245).

§§ 30–316 to 30–318.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 11–1101.

§ 30–319. Application of payments—Crediting on account of other support orders.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1101.

NOTES TO DECISIONS

Application of support payments

Under support order, rendered under Uniform Act, requiring father to make support payments until child reached 18, and including "money judgment" for arrearages, any "current" payments made after 18th birthday might be applied to reduce arrearage indebtedness *W. Howze* v. *E. Howze* (D.C. App. 1967, 225 A. 2d 477).

§ 30–320. Support of illegitimate children.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 11–1101, 30–302.

§ 30–321. Effect of participation in proceeding.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1101.

§ 30–322. Appeals.

Any party aggrieved by any final or interlocutory order or judgment entered in the court shall have the same right of appeal available in respect to any final or interlocutory order or judgment entered in the Superior Court of the District of Columbia. (July 10, 1957, 71 Stat. 289, Pub. L. 85–94, § 22; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 159(f)(2), 84 Stat. 578.)

AMENDMENT

1970—Section 159(f)(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out "civil branch of the municipal court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia in civil cases".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 11–1101.

§§ 30–323, 30–324.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 11–1101.

TITLE 31.—EDUCATION AND CULTURAL INSTITUTIONS

Chapter 1.—BOARD OF EDUCATION

Sec.
31–101. Election and number of members—Term of office—Commencement of term—Compensation of members—Qualifications—Forfeiture of office for failure to maintain qualifications—Vacancies—President—Secretary—Meetings.
31–104a. Members exempt from personal liability—Costs and supersedeas bond.
31–104b. Coordination with the District of Columbia Government.
31–121. Education of pages—Board authorized to employ and compensate personnel.

§ 31–101. Election and number of members—Term of office—Commencement of term—Compensation of members—Qualifications—Forfeiture of office for failure to maintain qualifications—Vacancies—President—Secretary—Meetings.

(a) The control of the public schools of the District of Columbia is vested in a Board of Education to consist of eleven elected members, three of whom are to be elected at large, and one to be elected from each of the eight school election wards established under chapter 11 of title 1. The election of the members of the Board of Education shall be conducted on a nonpartisan basis and in accordance with such chapter.

(b) (1) Except as provided in paragraph (2) of this subsection and section 1–1110(e), the term of office of a member of the Board of Education shall be four years.

(2) Of the members of the Board of Education first elected after the date of the enactment of this paragraph, three members elected from wards and two members elected at large shall serve for terms ending January 26, 1970, and the other six members shall serve for terms ending January 24, 1972. The members who shall serve for terms ending January 26, 1970, shall be determined by lots cast before the Board of Elections of the District of Columbia upon a date set and pursuant to regulation issued by the Board of Elections.

(3) The term of office of a member of the Board of Education elected at a general election shall begin at noon on the fourth Monday in January next following such election. A member may serve more than one term.

(4) The members may receive compensation at a rate fixed by the District of Columbia Council, which shall not exceed $1,200 per annum.

(c) (1) Each member of the Board of Education elected from a ward shall at the time of his nomination (A) be a qualified elector (as that term is defined in section 1–1102) in the school election ward from which he seeks election, (B) have, for the one-year period immediately preceding his nomination, resided in the school election ward from which he is nominated, (C) have, during the three years next preceding his nomination, been an actual resident of the District of Columbia and have during such period claimed residence nowhere else, and (D) hold no elective office other than delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States. A member shall forfeit his office upon failure to maintain the qualifications required by this paragraph.

(2) Each member of the Board of Education elected at large shall at the time of his nomination (A) be a qualified elector (as that term is defined in section 1–1102) in the District of Columbia, (B) have, during the three-year period next preceding his nomination, been an actual resident of the District of Columbia and have during such period claimed residence nowhere else, and (C) hold no elective office other than delegate or alternate delegate to a convention of a political party nominating candidates for President and Vice President of the United States. A member shall forfeit his office upon failure to maintain the qualifications required by this paragraph.

(3) No individual may hold the office of member of the Board of Education and also be an officer or employee of the District of Columbia government or of the Board of Education. A member will forfeit his office upon failure to maintain the qualification required by this paragraph.

(d) Whenever, before the end of his term, a member of the Board of Education dies, resigns, or becomes unable to serve or a member-elect of the Board of Education fails to take office, such vacancy shall be filled as provided in section 1–1110(e).

(e) The Board of Education shall select a President from among its members at the first meeting of the Board of Education held on or after the date (prescribed in paragraph (3) of subsection (b) of this section) on which members are to take office after each general election. The Board of Education may appoint a secretary, who shall not be a member of the Board of Education. The Board of Education shall hold stated meetings at least once a month during the school year and such additional meetings as it may from time to time provide for. Meetings of the Board of Education shall be open to the public; except that the Board of Education (1) may close to the public any meeting (or part thereof) dealing with the appointment, promotion, transfer, or termination of employment of, or any other related matter involving, any employee of the Board of Education, and (2) may close to the public any meeting (or part thereof) dealing with any other matter but no final policy decision on such other matter may be made by the Board of Education in a meeting (or part thereof) closed to the public. (June 20, 1906, 34 Stat. 316, ch. 3446, § 2; Jan. 26, 1929, 45 Stat. 1139, ch. 105; June 25, 1936, 49 Stat. 1921, ch. 804; June

25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 2, 1957, 71 Stat. 341, Pub. L. 85–119, § 1; Apr. 22, 1968, Pub. L. 90–292, § 3(a), 82 Stat. 101.)

AMENDMENTS

1968—Section 3(a) of the act Apr. 22, 1968, Pub. L. 90–292, amended the section by striking out the first paragraph of subsection (a) as the same appeared as section 2 in the act of June 20, 1906, 34 Stat. 316, being the first six sentences of subsection (a) as the same is set out in the 1967 edition of the Code and inserted in place thereof the matters set out above as subsections (a) to (e). The last paragraph of sec. 2 of the act of June 20, 1906, relating to personal liability of the members which was added by the act of Jan. 26, 1929, 45 Stat. 1139 (being the seventh sentence of subsection (a) as set out in the 1967 edition of the code) was redesignated by section 3(b) as subsection (i) and has been reclassified herein as section 31–104a.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

Section 6(a)[1], act Apr. 22, 1968, Pub. L. 90–292 provided:

"The amendments made by this act [for enumeration of amendments and enactments made by this Act, see Short Title notes under this section and 1–1101] shall take effect on May 15th, 1968, except that—

(1) the Board of Education of the District of Columbia, appointed under the Act of June 20, 1906 (as in effect on the date of the enactment of this Act), shall continue to exercise the powers, functions, duties vested in it under such Act (as in effect on such date);

(2) vacancies in such Board shall be filled by appointment in accordance with such Act (as in effect on such date); and

(3) the members of such Board appointed under such Act (as in effect on such date) shall continue in office; until such time as at least six of the members first elected to the Board of Education (under such Act as amended by this Act) take office.

FINDINGS AND DECLARATION OF PURPOSE

Section 2, act Apr. 22, 1968, Pub. L. 90–292, provided:

"The Congress hereby finds and declares that the school is a focal point of neighborhood and community activity; that the merit of its schools and educational system is a primary index to the merit of the community; and that the education of their children is a municipal matter of primary and personal concern to the citizens of a community. It is therefore the purpose of this Act to give the citizens of the Nation's Capital a direct voice in the development and conduct of the public educational system of the District of Columbia; to provide organizational arrangements whereby educational programs may be improved and coordinated with other municipal programs; and to make District schools centers of neighborhood and community life."

REPEAL

Act Apr. 22, 1968, Pub. L. 90–292, § 3(c), repealed the provisions of the act of Aug. 2, 1957, Pub. L. 85–119, § 1, which added former subsection (b) to this section. The subsection authorized the Judges of the United States District Court to remove a member of the Board of Education for cause after a public hearing.

SHORT TITLE

Section 1, act Apr. 22, 1968, Pub. L. 90–292, provided:

"This Act (amending sections 31–101 to 31–105, 31–108, 31–110 to 31–112, 31–117 and redesignating the second, third, fourth and fifth paragraphs of sec. 2(a) of the Act of June 20, 1906, as subsections 3(f), (g), (h), and (i), set out herein as sections 31–102 to 31–104a; enacting sec. 2, set out as note to 31–101, and sec. 31–104b, and making certain amendments to the District of Columbia Election Law, as set out in 'Short Title' note under section 1–1101) may be cited as the 'District of Columbia Elected Board of Education Act.'"

[1] There is no subsection (b) in sec. 6.

TRANSFER OF FUNCTIONS OF THE BOARD OF COMMISSIONERS

Section 501 of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"Status of certain agencies. (a) Functions now vested in any agency listed in subsection (b) of this section, or in any officer or body of or under such agency, shall remain so vested; but all functions of the Board of Commissioners of the District of Columbia and all functions of the President of that Board or of any other member of the Board, relating to the listed agency or its functions or to an officer or body thereof or to the functions of such officer or body shall be deemed to be transferred by Part IV of this reorganization plan.

"(b) The following agencies of the Corporation are the agencies referred to in subsection (a) of this section:

"(1) Board of Education (including the public school system)

"(2) Board of Library Trustees (including the public libraries)

"(3) Recreation Board

"(4) Public Service Commission

"(5) Zoning Commission

"(6) Zoning Advisory Council

"(7) Board of Zoning Adjustment

"(8) Office of the Recorder of Deeds

"(9) Armory Board"

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–1601, 31–1621.

NOTES TO DECISIONS

Approval of political party

A local statute providing that the election of District of Columbia Board of Education members should be conducted on a nonpartisan basis does not prohibit a candidate from receiving approval of political party and using benefit of such approval to his advantage. *C. L. Boone* v. *M. Taylor, et al.* (D.C. App. 1969, 256 A. 2d 411).

Constitutionality of appointment of school board

Constitutional provision empowering Congress to exercise exclusive legislation in all cases whatsoever over the District of Columbia gave Congress power to enact statute providing that members of the District of Columbia board of education shall be appointed by United States District Court judges of the district. *J. W. Hobson, etc., et al.* v. *C. F. Hansen, Superintendent etc., et al.* (1967, 265 F. Supp. 902).

Constitutional provision that Congress may by law vest appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in heads of departments empowered Congress to enact statute providing that members of the District of Columbia board of education shall be appointed by United States District Court judges of the District of Columbia. *Id.*

The fact that in a number of instances Congress has conferred appointive power upon court or judges of United States District Court for the District of Columbia was not conclusive on issue of validity of statute permitting appointment of members of District of Columbia board of education by United States District Court judges of the District of Columbia but demonstrated the deep-seated congressional view of the constitutional issue and was entitled to weight in judicial decision on that issue. *Id.*

Power conferred upon judges by statute stating that members of District of Columbia board of education shall be appointed by United States District Court judges of District of Columbia does not violate doctrine of separation of powers. *Id.*

The validity of congressional conference upon United States District Court judges of District of Columbia of power to appoint District of Columbia board of education members is not to be denied merely because an appointee in carrying out his own separation functions might become involved in controversies; the board members are accountable under the law for the manner in which they perform their duties. *Id.*

Impairment of judicial function

Appointive power conferred by Congress under statute providing that members of District of Columbia board of education shall be appointed by United States District

Court judges of the District of Columbia does not violate due process though litigation might arise before the district court over manner in which the board administers the schools. *J. W. Hobson etc., et al.* v. *C. F. Hansen, Superintendent etc., et al.* (1967, 265 F. Supp. 902).

Court could not presume that in any future case, which might involve performance by members of District of Columbia board of education of their duties, a denial of due process would occur by reason of statute empowering United States District Court judges of the District of Columbia to appoint the board members. *Id.*

The official act of a judge of the United States District Court for the District of Columbia in participating in selection of District of Columbia board of education members does not in and of itself preclude on due process grounds the ability of the judge to decide fairly the merits of litigation challenging validity of performance by board member of his duties as such. *Id.*

Pupils and parents interest to challenge school board's authority

Pupils in public schools administered by District of Columbia board of education and parents of those pupils had sufficient interest to challenge authority of the board to administer the schools on theory that statute providing that members of board shall be appointed by United States District Court judges of the District of Columbia is unconstitutional. *J. W. Hobson, etc., et al.* v. *C. F. Hansen, Superintendent etc., et al.* (1967, 265 F. Supp. 902).

The fact that issue of basic authority of District of Columbia board of education to administer schools might escape resolution unless pupils and their guardians or parents had standing to challenge validity of statute purportedly giving that authority argued for resolving doubts, if any, as to standing in favor of the pupils, parents, and guardians, in absence of hard and fast rule governing standing to sue. *Id.*

§ 31–102. Appointment—Promotion—Transfer or dismissal of directors, teachers, upon recommendation of superintendent.

No appointment, promotion, transfer, or dismissal of any director, supervising principal, principal, head of department, teacher, or any other subordinate to the superintendent of schools shall be made by the Board of Education, except upon the written recommendation of the superintendent of schools. (June 20, 1906, 34 Stat. 317, ch. 3446, § 2; redesignated as subsection 2(f) by Act Apr. 22, 1968, Pub. L. 90–292, § 3(b), 82 Stat. 102.)

AMENDMENT

1968—Section 3(d) of Pub. L. 90–292 amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note to § 31–101.

§ 31–103. Determination of general policies—Expenditures of funds—Appointment of teachers and employees.

The Board shall determine all questions of general policy relating to the schools, shall appoint the executive officers hereinafter provided for, define their duties, and direct expenditures. All expenditures of public funds for such school purposes shall be made and accounted for as now provided by law under the direction and control of the Commissioners of the District of Columbia. The Board shall appoint all teachers in the manner hereinafter prescribed and all other employees provided for in this chapter. (June 20, 1906, 34 Stat. 317, ch. 3446, § 2; redesignated as subsection 2(g) by Act Apr. 22, 1968, Pub. L. 90–292, § 3(b), 82 Stat. 102.)

AMENDMENT

1968—Section 3(d) of Pub. L. 90–292 amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note to § 31–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 31–104. Annual estimates.

The Board of Education shall annually on the first day of October transmit to the commissioners of the District of Columbia an estimate in detail of the amount of money required for the public schools for the ensuing year, and said commissioners shall transmit the same in their annual estimate of appropriations for the District of Columbia, with such recommendations as they may deem proper. (June 20, 1906, 34 Stat. 317, ch. 3446, § 2; redesignated as subsection 2(h) by Act Apr. 22, 1968, Pub. L. 90–292, § 3(b). 82 Stat. 102.)

AMENDMENT

1968—Section 3(d) of Pub. L. 90–292 amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note to § 31–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 31–104a. Members exempt from personal liability—Costs and supersedeas bond.

The members of the Board of Education of the District of Columbia shall not be personally liable in damages for any official action of the said Board performed in good faith in which the said members participate, nor shall any member of said Board be liable for any costs that may be taxed against them or the Board on account of any such official action by them as members of the said Board; but such costs shall be charged to the District of Columbia and paid as other costs are paid in suits brought against the municipality; nor shall the said Board or any of its members be required to give any supersedeas bond or security for costs or damages on any appeal whatever. (June 20, 1906, 34 Stat. 316, ch. 3446, § 2; 5th par., as added Jan. 26, 1929, 45 Stat. 1139, ch. 105; redesignated as subsection 2(i), Apr. 22, 1968, Pub. L. 90–292, § 3(b), 82 Stat. 102.)

AMENDMENT

1968—Section 3(d) of Pub. L. 90–292, amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

CODIFICATION

This section was formerly the seventh sentence of subsection (a) of former section 31–101 as set out in the 1967 edition of the Code, and was the fifth paragraph of the Act of June 20, 1906, as amended by the Act of Jan. 26, 1929. Sec. 3(b) of the Act of Apr. 22, 1968, Pub. L. 90–292, redesignated this paragraph as subsection (i) of the Act

of June 20, 1906, as amended and the same is therefor set out herein as a separate section. See also amendment note under section 31–101.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note to § 31–101.

§ 31–104b. Coordination with the District of Columbia Government.

(a) The Board of Education and the Commissioner of the District of Columbia shall jointly develop procedures to assure the maximum coordination of educational and other municipal programs and services in achieving the most effective educational system and utilization of educational facilities and services to serve broad community needs. Such procedures shall cover such matters as—

(1) design and construction of educational facilities to accommodate civic and community activities such as recreation, adult and vocational education and training, and other community purposes;

(2) full utilization of educational facilities during nonschool hours for community purposes;

(3) utilization of municipal services such as police, sanitation, recreational, maintenance services to enhance the effectiveness and stature of the school in the community;

(4) arrangements for cost-sharing and reimbursements on school and community programs involving utilization of educational facilities and services; and

(5) other matters of mutual interest and concern.

(b) The Board of Education may invite the Commissioner of the District of Columbia or his designee to attend and participate in meetings of the Board on matters pertaining to coordination of educational and other municipal programs and services and on such other matters as may be of mutual interest. (Apr. 22, 1968, Pub. L. 90–292, § 5, 82 Stat. 107.)

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note to § 31–101.

§ 31–105. Superintendent—Appointment—Term of office—Duties.

The Board shall appoint one superintendent for all the public schools in the District of Columbia, who shall hold said office for a term of three years and who shall have the direction of and supervision in all matters pertaining to the instruction in all the schools under the Board of Education. He shall have a seat in the Board and the right to speak on all matters before the Board, but not the right to vote. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3; Apr. 22, 1968, Pub. L. 90–292, § 3(d), 82 Stat. 102.)

AMENDMENT

1968—Section 3(d) of Pub. L. 90–292, amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note to § 31–101.

§ 31–106. Superintendent authorized to act between meetings of the board.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–107.

§ 31–108. Removal of superintendent.

The Board shall have power to remove the superintendent at any time for adequate cause affecting his character and efficiency as superintendent. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3; Apr. 22, 1968, Pub. L. 90–292, § 3(d), 82 Stat. 102.)

AMENDMENT

1968—Section 3(d) of Pub. L. 90–292, amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note to § 31–101.

§ 31–110. Director of intermediate instruction for white schools—Appointment—Duties.

The Board, upon the written recommendation of the superintendent of schools, shall appoint a director of intermediate instruction for the white schools who shall have charge under the direction of the superintendent of the unification of educational work of grades five to eight, inclusive. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3; Apr. 22, 1968, Pub. L. 90–292, § 3(d), 82 Stat. 102.)

AMENDMENT

1968—Section 3(d) of Pub. L. 90–292, amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note under § 31–101.

§ 31–111. Supervisor of manual training—Appointment—Duties.

There shall be appointed by the Board a supervisor of manual training who, under the direction of the superintendent, shall have supervision of manual training instruction. (June 20, 1906, 34 Stat. 317, ch. 3446, § 3; Apr. 22, 1968, Pub. L. 90–292, § 3(d), 82 Stat. 102.)

AMENDMENT

1968—Section 3(d) of Pub. L. 90–292, amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note under § 31–101.

§ 31–112. Classification of academic and scientific subjects in certain high schools.

The Board of Education shall classify all academic and scientific subjects in the Central, Eastern, Western, and Business High Schools, and the McKinley Manual Training School into eight departments so that each department shall contain correlated subjects and the M Street High School and the Armstrong Manual Training School shall be similarly classified into four departments so that each department shall contain correlated subjects. (June 20, 1906, 34 Stat. 319, ch. 3446, § 5; Apr. 22, 1968, Pub. L. 90–292, § 3(d), 82 Stat. 102.)

AMENDMENT

1968—Section 3(d) of Pub. L. 90–292, amended this section by striking out "board of education" and "board"

each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note under § 31–101.

§ 31–117. Masculine pronoun to include both male and female.

Wherever the masculine pronoun occurs in this chapter it shall be construed to apply to either male or female teachers or employees of the Board of Education. (June 20, 1906, 34 Stat. 321, ch. 3446, § 12; Apr. 22, 1968, Pub. L. 90–292, § 3(d), 82 Stat. 102.)

AMENDMENT

1968—Section 3(d) of Pub. L. 90–292, amended this section by striking out "board of education" and "board" each place they appear and inserted in lieu thereof "Board of Education" and "Board" respectively.

EFFECTIVE DATE OF PUB. L. 90–292 AND TERMINATION OF OFFICE

See note under § 31–101.

§ 31–118. Teachers' college—Expansion of normal schools.

CROSS REFERENCE

Assumption of control of District of Columbia Teachers College by Board of Higher Education, transfer of personnel, property, etc., exceptions, etc., see § 31–1603(a)(12).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1603.

§ 31–121. Education of pages—Board authorized to employ and compensate personnel.

The Board of Education of the District of Columbia is hereby authorized to employ such personnel for the education of pages as may be required and to pay compensation for such services in accordance with such rates of compensation as the Board of Education may prescribe. (July 28, 1967, Pub. L. 90–57, § 101, 81 Stat. 134.)

SIMILAR PROVISIONS

Provisions similar to those in this section are contained in the following legislative appropriation acts and in a number of earlier appropriation acts:

1971—Aug. 18, 1970, Pub. L. 91–382, § 101, 84 Stat. 817.
1970—Dec. 12, 1969, Pub. L. 91–145, § 101, 83 Stat. 350.
1969—July 23, 1968, Pub. L. 90–417, § 417, 82 Stat. 407.

CODIFICATION

The provisions of this section were taken from the Legislative Appropriation Act for 1968 and are contained in Pub. L. 90–57, 81 Stat. 135, under the heading, "Education of Pages", which provides for the education of Congressional and Supreme Court pages.

Chapter 2.—COMPULSORY SCHOOL ATTENDANCE AND WORK PERMITS

Sec.
31–213. Family Division of Superior Court given jurisdiction.

§ 31–201. Resident children of 7 to 16 years to have instruction during school year—Duty of parent or guardian.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–202, 31–205, 31–208, 31–210 to 31–213.

§ 31–202. Employed children between 14 and 16 excused from attendance after completing eighth grade.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–205, 31–208, 31–210 to 31–213.

§§ 31–203, 31–204.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 31–202, 31–205, 31–208, 31–210 to 31–213.

§ 31–205. Daily record of attendance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–202, 31–208, 31–210 to 31–213.

§ 31–206. Designated absences in a month to be reported.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–202, 31–205, 31–208, 31–210 to 31–213.

§ 31–207. Failure to keep child at school a misdemeanor—Penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 16–2383, 31–202, 31–205, 31–208, 31–210 to 31–213.

SCHOOL CENSUS

§ 31–208. Census of children between ages of 3 and 18 years—Daily amendment—Details of enumeration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–202, 31–205, 31–210 to 31–213.

§ 31–209. Enrollment and withdrawal of pupils to be reported.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–202, 31–205, 31–208, 31–210 to 31–213.

§ 31–210. Neglect or refusal to furnish information for enumeration—Penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–202, 31–205, 31–208, 31–211 to 31–213.

ADMINISTRATION

§ 31–211. Department of school attendance and work permits—Creation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–212, 31–213, 36–209.

§ 31–212. Director—Appointment—Employees—Competitive examinations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–211, 31–213, 36–209.

§ 31–213. Family Division of Superior Court given jurisdiction.

The Family Division of the Superior Court is hereby given jurisdiction in all cases arising under sections 31–201 to 31–213. (Feb. 4, 1925, 43 Stat. 808, ch. 140, Art. III, § 3; May 29, 1928, 45 Stat. 1006, ch. 908, § 26; July 29, 1970, Pub. L. 91–358, title I, § 159(g), 84 Stat. 578.)

AMENDMENT

1970—Section 159(g) of Act July 29, 1970, Public Law 91–358 amended section by striking out "juvenile Court" and inserting in lieu thereof "Family Division of the Superior Court."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–211, 31–212, 36–209.

Chapter 3.—TUITION OF NONRESIDENTS

§ 31–301a. Attendance at Teachers' College by foreign students.

CROSS REFERENCE

Assumption of control of District of Columbia Teachers College by Board of Higher Education, transfer of personnel, property, etc., exceptions, etc., see § 31–1603(a)(12).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–310.

§ 31–307. Payment of tuition by nonresidents—Board of Education to fix tuition—Deposit of payments—Exception.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(236) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (b) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–308 to 31–311.

§ 31–308. Board of Education to determine who is required to pay tuition—Penalties—Prosecutions to be conducted by Corporation Counsel.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(237) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–309 to 31–311.

§ 31–309. Definitions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–308, 31–310, 31–311.

§ 31–310. Authority of Commissioners not affected—Delegation of functions—Section 31–301a to remain in full force and effect.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–308, 31–309, 31–311.

§ 31–311. Payment of tuition by students of Teachers College.

CROSS REFERENCE

Assumption of control of District of Columbia Teachers College by Board of Higher Education, transfer of personnel, property, etc., exceptions, etc., see § 31–1603(a)(12).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–308 to 31–310.

Chapter 6.—TEACHERS, SCHOOL OFFICERS, AND OTHER EMPLOYEES IN GENERAL

§ 31–609. Commencement of compensation—Installment payments.

The salaries of all teachers, and clerks and librarians in the high and manual-training schools, duly elected, whose services commence with the opening day of school and who shall perform their duties, shall begin on the first day of September and shall be paid in ten monthly installments, the first payment to be made on the 1st day of October, or as near that date as practicable, and the payment for the month of June to be made upon the completion of the school term in June. However, effective July 1, 1970, the salaries of employees in salary class 15 and such other employees who were paid on a ten-month basis immediately prior to the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970, whose services commence with the opening of school and who shall perform their duties, shall begin on the first day of September and shall be paid in twenty semimonthly installments except that employees in salary class 15 may, under such rules and regulations as the Board of Education may prescribe, make an election to be paid in twenty-four semimonthly installments. The first payment shall be made on the first day of October, or as near that date as practicable; and the second payment shall be made fifteen days thereafter or as near that date as practicable. Subsequent payments shall be on the first and sixteenth days of the month or as near those dates as practicable. The salaries of other employees in salary class 15 shall begin when they enter upon their duties. (May 26, 1908, ch. 198, § 1, 35 Stat. 291, June 30, 1970, Pub. L. 91–297, title III, § 304(a), 84 Stat. 364.)

REFERENCE IN TEXT

The words "the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970" mean the effective date of title III of Pub. L. 91–297 as prescribed by section 306 thereof, which section is set out as a note to section 31–1501.

CODIFICATION

Section is from the District of Columbia Appropriation Act, 1909, as amended by sec. 304(a) of Pub. L. 91–297.

AMENDMENT

1970—Section 304(a) of Pub. L. 91–297, struck out ": *Provided*, That the salaries of other teachers shall begin when they enter upon their duties" and inserted in lieu thereof the last four sentences as above set out.

EFFECTIVE DATE OF 1970 AMENDMENT

See note to section 31–1501.

CROSS REFERENCE

Installment payment of salaries of employees subject to sec. 31–1501 et seq., see sec. 31–1543.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1402.

§ 31–609a. Installment payments of certain teachers.

CROSS REFERENCE

Installment payment of salaries of employees subject to sec. 31–1501 et seq., see sec. 31–1543.

§§ 31–610, 31–612.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 31–632.

METHOD OF PROMOTION OF EMPLOYEES

§ 31–630. Rules for division of time and computation of pay for services.

Effective July 1, 1970, the following rules for division of time and computation of pay for services rendered are established: Compensations of all employees in salary class 15 and such other employees who were paid on a ten-month basis immediately prior to the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970 shall be paid in twenty semimonthly installments, except that employees in salary class 15 may, under such

rules and regulations as the Board of Education may prescribe, make an election to be paid in twenty-four semimonthly installments. In making payments for a fractional part of a month, one-fifteenth of an installment shall be the daily rate of pay. For the purpose of computing such compensation and for computing time for services rendered during a fractional part of a semimonthly period in connection with the compensation of such employees, each and every semimonthly period shall be held to consist of fifteen days, without regard to the actual number of days in any semimonthly period thus excluding the 31st day of any calendar months from the computation and treating February as if it actually had thirty days. Any person entering the service of the schools during a thirty-one-day month and serving until the end thereof shall be entitled to pay for that month from the date of entry to the 30th day of such month, both days inclusive; and any person entering such service during the month of February and serving until the end thereof shall be entitled to one month's pay, less as many days thereof as there were days elapsed prior to the date of entry. For one day's unauthorized absence on the 31st day of any calendar month one day's pay shall be forfeited. (May 26, 1908, ch. 198, § 1, 35 Stat. 291; June 30, 1970, Pub. L. 91–297, title III, § 304(b), 84 Stat. 365.)

REFERENCE IN TEXT

The words "the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970" mean the effective date of title III of Pub. L. 91–297 as prescribed by section 306 thereof, which section is set out as a note to section 31–1501.

CODIFICATION

Section is from the District of Columbia Appropriation Act, 1909, as amended by section 304(b) of Pub. L. 91–297.

AMENDMENT

1970—Section 304(b) of Pub. L. 91–297, amended the section to read as above set out.

EFFECTIVE DATE OF 1970 AMENDMENT

See note to section 31–1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1402.

§ 31–631. Double salaries—School teachers and employees in District of Columbia.

Section 5533 of title 5, U.S. Code [relating to dual compensation] shall not apply to teachers in the public schools of the District of Columbia who are also employed as teachers of night schools and vocation schools. (Oct. 6, 1917, 40 Stat. 384, ch. 79, § 9; July 8, 1918, 40 Stat. 823, ch. 139, § 1; June 5, 1920, 41 Stat. 1017, ch. 253, § 1; Aug. 19, 1964, 78 Stat. 491, 493, Pub. L. 88–448, title IV, §§ 401(i), 402(a)(17)(18).)

CODIFICATION

The reference in this section to "section 5533 of title 5, U.S. Code [relating to dual compensation]" is substituted for "section 301 of the Dual Compensation Act" on authority of § 7(b) of act Sept. 6, 1966, Pub. L. 89–554, set out in note under § 1–251. The Dual Compensation Act (Aug. 19, 1964, 78 Stat. 484, Pub. L. 88–448), except for subsec. (e) of section 301 and other provisions of the act not permanent and general, was repealed by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a) (of which § 1 revised and enacted title 5, U.S.C., into law), and § 301 thereof, except for subsec. (e) of that section, is now covered by § 5533 of title 5, U.S.C. For provisions of subsec. (e) of such § 301, see note under former § 31–631b.

Double salary restriction was made inapplicable to teachers employed as night school and vocation school teachers by Second Deficiency Appropriation Act, 1917, act Oct. 6, 1917; to teachers employed by executive departments or independent establishments of the United States government and employees of the community center by First Deficiency Appropriation Act, 1918, act July 8, 1918; and to employees of the school garden department by the Third Deficiency Appropriation Act, 1920, act June 5, 1920.

This section set out in this supplement to correct an error in text.

§ 31–631a. Same—Custodial employees in District of Columbia.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 section 5533 U.S. Code.

SABBATICAL YEAR

§§ 31–632, 31–633.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 31–634 to 31–637, 31–728, 31–1546.

§ 31–634. Teachers' salary while on leave for educational purposes—Deductions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–728, 31–635, to 31–637, 31–1546.

§ 31–635. Employees other than elementary and secondary school teachers—Salary while on leave—Deductions—Temporary employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–634, 31–636, 31–637, 31–728, 31–1546.

§ 31–636. Inclusion of sabbatical year for promotion and retirement purposes.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–634, 31–635, 31–637, 31–728, 31–1546.

§ 31–637. Masculine pronoun construed to include female employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–634 to 31–636, 31–728, 31–1546.

§§ 31–638 to 31–658.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 31–622a.

TEACHERS' SALARY ACT OF 1947

§ 31–659. Transferred.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–691a, 31–697.

§ 31–676. Repealed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–692.

SICK AND EMERGENCY LEAVES

§ 31–691. Sick and emergency leaves authorized for teachers and attendance officers.

All teachers and attendance officers in the employ of the Board of Education of the District of Columbia shall be entitled to cumulative leave with pay for personal illness, presence of contagious disease or death in the home, or pressing emergency, in accordance with such rules and regulations as the said Board of Education may prescribe. Such cumulative leave with pay shall be granted at the rate of

one day for each month from September through June of each year, both inclusive. Under such rules and regulations as the Board of Education may prescribe any teacher or attendance officer may use three days of such cumulative leave with pay in any school year for any purpose, upon giving timely notice of intended absence, except that in the case of leave taken under this sentence for any purpose (other than to attend a religious service or to observe a religious holiday), no more than 5 per centum of the total number of the teachers in any school in the District of Columbia public school system, or 3 teachers in such school, whichever is greater, may be on leave under this sentence. (Oct. 13, 1949, 63 Stat. 842, ch. 686, § 1; Oct. 29, 1951, 65 Stat. 660, ch. 601, § 1; Dec. 18, 1967, Pub. L. 90–212, § 1(a), 81 Stat. 659; May 27, 1968, Pub. L. 90–319, § 5, 82 Stat. 140.)

AMENDMENTS

1968—Section 5 of act May 27, 1968, Pub. L. 90–319, amended section by adding before the period at the end thereof the exception provisions relating to maximum leave.

1967—Section 1(a), Act Dec. 18, 1967, Pub. L. 90–212, amended section by striking out the third sentence, which read as follows: "The total cumulation shall not exceed seventy-five days for probationary and permanent teachers and attendance officers, and the total cumulation shall not exceed twenty days for temporary teachers and attendance officers."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–691a, 31–692, 31–694a, 31–697, 31–1545.

§ 31–692. Additional leave credits for service prior to July 1, 1949.

In addition to the cumulative leave provided by section 31–691, each probationary and permanent teacher shall be credited on July 1, 1949, with one day of leave with pay for each complete year of service in the public schools of the District of Columbia prior to July 1, 1949: *Provided,* That the leave credited under the provisions of this section shall be granted for the same purposes as leave with pay is provided in section 31–691. Attendance officers shall be credited on July 1, 1949, with all cumulative leave with pay to which they are entitled on June 30, 1949, under the provisions of section 31–676. No attendance officer shall be entitled to annual or sick leave with pay under the provisions of any other act. (Oct. 13, 1949, 63 Stat. 842, ch. 686, § 2; Oct. 29, 1951, 65 Stat. 660, ch. 601, § 2; Dec. 18, 1967, Pub. L. 90–212, § 1(b), 81 Stat. 659.)

AMENDMENT

1967—Section 1(b), act Dec. 18, 1967, Pub. L. 90–212, amended the last sentence to read as above set out. This amendment resulted in the deletion of the following language from the sentence: "The total cumulation of leave with pay allowable under sections 31–691, 31–692 to 31–697 and the District of Columbia Teachers' Salary Act of 1947 shall not exceed seventy-five days, and".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–691a, 31–694a, 31–697, 31–1545.

§ 31–693. Application of credits to maternity leaves authorized.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–691a, 31–692, 31–694a, 31–697, 31–1545.

§ 31–694. Additional leaves in emergencies.

In cases of serious disability or ailments, and when required by the exigencies of the situation, and in accordance with such rules and regulations as the Board of Education may prescribe, the superintendent of schools may advance additional leave with pay not to exceed thirty days to every probationary or permanent teacher or attendance officer who may apply for such advanced leave. (Oct. 13, 1949, 63 Stat. 843, ch. 686, § 4; Oct. 29, 1951, 65 Stat. 660, ch. 601, § 3; Dec. 18, 1967, Pub. L. 90–212, § 1(c), 81 Stat. 659.)

AMENDMENT

1967—Section 1(c), Act Dec. 18, 1967, Pub. L. 90–212, amended section by striking out "twenty-five" and inserting "thirty".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–691a, 31–692, 31–694a, 31–697, 31–1545.

§§ 31–695, 31–696.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 31–691a, 31–692, 31–694a, 31–697, 31–1545.

§ 31–697. Rules and regulations—Definitions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–691a, 31–692, 31–694a, 31–1545.

§ 31–698. Regulation of vacation periods and annual leave by the Board of Education.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–698a, 31–1544.

§ 31–698a. Leave accrued prior to March 5, 1952—Authority of Board of Education to promulgate rules.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–698, 31–1544.

TEACHER FOREIGN EXCHANGE PROGRAM

§§ 31–699, 31–699a.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 31–699b, 31–1547.

§ 31–699b. Payment of salary during exchange.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1547.

Chapter 7.—RETIREMENT OF PUBLIC SCHOOL TEACHERS

SUBCHAPTER II.—RETIREMENT AFTER JUNE 30, 1946

Sec.

31–721a. Retirement credit for certain leave without pay—Matching retirement deposits.
31–723. Voluntary and involuntary retirement—Minimum period of service—Eligibility for retirement—Separation from service—Computation of length of service—Computation, commencement and termination of annuity.
31–729. Deferred annuity—Refunds—Deposit of amount withdrawn—Annuity to Survivors—Termination and restoration of annuity—Determination of dependency and disability.
31–730. Beneficiaries—Order of precedence for payment of lump-sum benefits—Payment of lump-sum credit—Definitions.
31–739c. Commissioners of the District of Columbia and Board of Commissioners of the District of Columbia, defined.

Sec.
31–739d. Increased annuities for certain surviving spouses.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 31–695, 31–696a, 31–1548.

SUBCHAPTER I.—RETIREMENT BEFORE JUNE 30, 1946

§ 31–701. Deduction from pay to provide annuity—Basis of deductions—Certificate.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 31–702. Deductions deposited in United States Treasury to credit of teacher—Income from investments.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–722.

§ 31–703. Retirement age—Continuous-employment requirements.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–705, 31–709.

§ 31–704. Retirement for disability after age of 45—Leave of absence without pay not exceeding two years—No break in continuous service—Medical examination.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–705, 31–706, 31–709.

§ 31–705. Annuity allowance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–706, 31–707.

§ 31–707. Longevity payable from District revenues—Calculation of annual appropriations—Certification to Budget Bureau—Reserves held by Treasury of United States—Interest.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–722.

§ 31–711. Precedence of payments upon death of teacher.

In the event of death of any such teacher the order of precedence of payments shall be as follows: First, to the beneficiary, or beneficiaries, designated in writing by the teacher and recorded on his or her individual account; second, if there be no such beneficiary or beneficiaries designated, then to the duly appointed executor, or administrator, of the estate; third, if there be no such beneficiary, or if an executor or administrator be not appointed within six months after the death of such teacher, payment shall be made into the registry of the court having probate jurisdiction. (Apr. 5, 1939, 53 Stat. 571, ch. 42, § 2; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 158(g), 84 Stat. 577.)

AMENDMENT

1970—Section 158(g) of Act July 29, 1970, Public Law 91–358 amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 31–715. Records to be kept by Commissioners of the District of Columbia—Annual report to Congress—Annual actuarial evaluation of fund.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 31–716. Annual estimates—No officer or employee receiving regular salary from Government shall receive additional compensation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 31–716a. Estimates of annual appropriations—Actuarial valuations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 31–717. Rules and regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(238) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in regard to making rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SUBCHAPTER II.—RETIREMENT AFTER JUNE 30, 1946

§ 31–721. Deductions—Interest bearing accounts—Optional deposits—Refunds.

Beginning on the first day of the first pay period which begins after December 31, 1969, there shall be deducted and withheld from the annual salary of each teacher in the public schools of the District of Columbia an amount equal to 7 per centum of the teacher's annual salary. The amounts deducted and withheld from the annual salary of each teacher, including amounts so deducted and withheld prior to July 1, 1946, under subchapter I of this chapter, shall be credited to an individual account of the teacher from whose salary the deduction is made, together with interest at 4 per centum per annum, compounded annually up to the effective date of this subchapter and thereafter at 3 per centum per annum, compounded annually from December 31 of the year in which the deductions are made: *Provided,* That such interest shall not be credited after December 31, 1956, except that in the case of a teacher separated before he has completed five years of eligible service interest shall be credited to the date of separation. These individual interest-bearing

accounts shall be kept by the Auditor of the District of Columbia.

* * * * *

(As amended Dec. 29, 1967, Pub. L. 90–231, § 1(1), 81 Stat. 747; May 22, 1970, Pub. L. 91–263, § 1(d)(1), 84 Stat. 257.)

CODIFICATION

In the second sentence of the first paragraph, "July 1, 1946" was substituted for "the effective date of this Act [this subchapter]" on authority of section 20 of act Aug. 7, 1946.

AMENDMENTS

1970—Section 1(d)(1), act May 22, 1970, Pub. L. 91–263, amended the first sentence by substituting "the first pay period which begins after December 31, 1969" for "the second month following June 4, 1957" and by increasing by one-half percent the deduction from the annual salary of each teacher to 7 percent.

1967—Section 1(1), act Dec. 29, 1967, Pub. L. 90–231, amended the proviso in the second sentence of the first paragraph by striking out "teaching service" and inserting in lieu "eligible service".

APPLICABILITY OF 1970 AMENDMENTS

Section 1(d)(2) of act May 22, 1970, Pub. L. 91–263 provided: "the amendment made by this subsection [to the first sentence of this section] shall not apply to any persons retired or otherwise separated prior to the date of enactment of this Act [May 22, 1970]."

Section 2(a) of act May 22, 1970, Pub. L. 91–263, provided: "The amendments made by subsections (a), (b), (e)(1), (e)(3), and (f) of section 1 of this Act [amending sections 31–733, 31–728, 31–729 (b)(1), (b)(3), and 31–725 (b)(1), (b)(2), respectively] shall not apply in the case of persons retired or otherwise separated prior to October 20, 1969, and the rights of such persons and their survivors shall continue in the same manner and to the same extent as if such amendments had not been made."

EFFECTIVE DATE OF 1970 AMENDMENTS

Section 5 of act May 22, 1970, Pub. L. 91–263, provided: "(a) Section 1 of this Act, except for subsection (d) [amending sections 31–725(b)(1)–(2), 31–728, 31–729 (b)(1)–(3), 31–733, and 31–739a(b), (c)(2), and enacting section 31–739d] shall be effective October 20, 1969.

"(b) Subsection (d) of section 1 of the Act [amending this section] shall be effective on the first day of the first pay period which begins after December 31, 1969.

"(c) Sections 3 and 4 of this Act [enacting section 31–721a and amending section 31–727] shall be effective on the date of enactment [May 22, 1970]."

SHORT TITLE

Section 6 of act May 22, 1970, Pub. L. 91–263, provided: "This Act [which enacted sections 31–721a and 31–739d, amended sections 31–721, 31–725(b) (1), (2), 31–727, 31–728, 31–729(b), 31–733, and 739a (b), (c)(2), and enacted provisions set out as notes under sections 31–721, 31–729, and 31–739a] may be cited as the 'District of Columbia Teachers' Retirement Amendments of 1970.'"

COMMISSIONERS OF THE DISTRICT OF COLUMBIA, DEFINED

Section 31–739c provides in part: "Wherever the term 'Commissioners of the District of Columbia' is used in sections 31–721 and 31–736, as amended, such term shall be deemed to mean the District of Columbia Council."

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(239) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section as to prescribing regulations regarding the deposit of additional sums by any teacher, and prescribing table of mortality, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

CROSS REFERENCE

For definitions of "Commissioners of the District of Columbia" or "Board of Commissioners of the District of Columbia", see section 31–739c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–634, 31–635, 31–724, 31–728, 31–729, 31–1542, 31–1603.

§ 31–721a. Retirement credit for certain leave without pay—Matching retirement deposits.

(a) Any teacher who enters on approved leave without pay to serve as a full-time officer or employee of an organization composed primarily of teachers, for the purpose of bargaining with the District of Columbia concerning grievances, disputes, hours of employment, or conditions of work, may, within sixty days after entering on such leave without pay, file with the Board of Education of the District of Columbia an election to receive full retirement credit for his periods of that leave without pay and arrange to pay currently into the teachers' retirement fund established pursuant to this subchapter, through the Board of Education, amounts equal to the retirement deductions plus additional amounts equivalent to such amounts, in lieu of District of Columbia contributions which would be applicable if he were in pay status. A teacher who is on approved leave without pay and serving as a full-time officer or employee of such an organization on May 22, 1970, may similarly make such election within sixty days after such date. If the election and all payments herein provided are not made, the teacher shall receive no credit for such periods of leave without pay occurring on or after May 22, 1970.

(b) A teacher may deposit with interest at 4 per centum compounded annually an amount equal to retirement deductions representing any period or periods of approved leave without pay while serving, prior to May 22, 1970, as a full-time officer or employee of an organization composed primarily of teachers, and may receive full retirement credit for such period or periods of leave without pay. In the event of the death of such teacher any individual entitled to annuity under this subchapter may make such deposit. (Aug. 7, 1946, ch. 779, § 1A, as added May 22, 1970, Pub. L. 91–263, § 3, 84 Stat. 259.)

CODIFICATION

In the last two sentences of subsection (a) and in the first sentence of subsection (b), "May 22, 1970" was substituted for "the date of enactment of this section".

EFFECTIVE DATE

Section effective May 22, 1970, see section 5(c) of act May 22, 1970, set out as a note under section 31–721.

§ 31–722. Retirement and annuity fund—Income from investments—Separate accounts.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

For definitions of "Commissioners of the District of Columbia" or "Board of Commissioners of the District of Columbia", see section 31–739c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–721, 31–724, 31–725, 31–735, 31–1542, 31–1603.

§ 31–723. Voluntary and involuntary retirement—Minimum period of service—Eligibility for retirement—Separation from service—Computation of length of service—Computation, commencement and termination of annuity.

(a) Any teacher who completes five years of eligible service and who is separated from the service—

(1) after becoming fifty-five years of age and completing thirty years of service,

(2) after becoming sixty years of age and completing twenty years of service, or

(3) after becoming sixty-two years of age,

is entitled to an annuity.

(b) Any teacher who completes five years of eligible service and who is involuntarily separated from the service, except by removal for cause on charges of misconduct or delinquency, after (1) completing twenty-five years of service, or (2) becoming fifty years of age and completing twenty years of service, is entitled to an annuity reduced by one-sixth of 1 per centum for each full month such teacher is under the age of fifty-five years at the date of his separation from the service.

(c) Any teacher who completes five years of eligible service and who becomes sixty-two years of age may be separated from the service by the Board of Education upon the written recommendation of the Superintendent of Schools. Any teacher who becomes seventy years of age shall be separated from the service unless upon the written recommendation of the Superintendent of Schools two-thirds of the members of the Board of Education vote to retain such teacher in the public schools for the good of the service.

(d) (1) The length of a teacher's service shall be computed in accordance with section 31–728.

(2) The amount of an annuity authorized by this section shall be computed in accordance with section 31–725.

(3) Each annuity authorized by this section shall commence on the day after the teacher is separated from the service and shall terminate on the date the teacher dies. (Aug. 7, 1946, 60 Stat. 876, ch. 779, § 3; Mar. 6, 1952, 66 Stat. 17, ch. 95, § 2; June 4, 1957, 71 Stat. 46, Pub. L. 85–46, § 1; Dec. 29, 1967, Pub. L. 90–231, § 1(2), 81 Stat. 747.)

AMENDMENT

1967—Section 1(2) of act Dec. 29, 1967, Pub. L. 90–231, amended section to read as above set out. For provisions of section prior to this amendment see 1967 edition of the code.

CROSS REFERENCE

For definitions of "Commissioners of the District of Columbia" or "Board of Commissioners of the District of Columbia", see section 31–739c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–724, 31–725, 31–729, 31–1542, 31–1603.

§ 31–724. Disability—Annual examination—Reappointment—Discontinued annuity—Voluntary deposits.

Any teacher who completes five years of eligible service, and who, before becoming eligible for retirement under the conditions defined in sections 31–721 to 31–723, becomes physically or mentally disabled and incapable of satisfactorily performing the duties of his position, by reason of disease or injury not due to vicious habits, intemperance, or willful misconduct on the part of the teacher, shall upon his own application or upon order of the Board of Education as provided later in this section be retired on an annuity computed in accordance with the provisions of sections 31–725 and 31–726 and beginning on the day after his pay ceases and he meets the service and disability requirements for title to annuity. Proof of freedom from vicious habits, intemperance, or willful misconduct for a period of more than five years next prior to becoming so disabled for useful and efficient service shall not be required in any case. No claim shall be allowed under the provisions of this section unless the application for retirement shall have been executed prior to the applicant's separation from the service or within six months thereafter. No teacher shall be retired under the provisions of this section unless examined under the direction of the Director of Public Health of the District of Columbia, and as a result of said examination, in his judgment, or in the judgment of the Superintendent of Schools concurred in by two-thirds of the members of the Board of Education, shall have been found to be physically or mentally incapacitated for efficient service.

* * * * *

(As amended Dec. 29, 1967, Pub. L. 90–231, § 1(3), 81 Stat. 747.)

AMENDMENT

1967—Section 1(3) of act Dec. 29, 1967, Pub. L. 90–231, amended section as follows:

(1) Struck out in the first paragraph "Any teacher to whom this Act (this subchapter) applies who shall have served on active duty in the public schools of the District of Columbia for a total period of not less than five years" and inserted in lieu "Any teacher who completes five years of eligible service",

(2) Struck out in the first paragraph "sections 5 and 6 hereof: Provided, That proof" and inserted in lieu "sections 5 and 6 (31–725 and 31–726) of this Act and beginning on the day after his pay ceases and he meets the service and disability requirements for title to annuity. Proof".

CROSS REFERENCE

For definitions of "Commissioners of the District of Columbia" or "Board of Commissioners of the District of Columbia", see section 31–739c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–725, 31–725a, 31–726, 31–729, 31–1542, 31–1603.

§ 31–725. Computation of annuity—Options.

(a) Except as otherwise provided in this subchapter, every teacher who shall be retired under the provisions of section 31–723 or section 31–724 shall receive an annuity composed of (1) the larger of (A) 1½ per centum of the average salary as defined in section 31–733, multiplied by so much of the total service as does not exceed five years, or (B) 1 per centum of the average salary, plus $25, multiplied by so much of the total service as does not exceed five years, plus (2) the larger of (A) 1¾ per centum of the average salary multiplied by so much of the total service as exceeds five years but does not exceed ten years, or (B) 1 per centum of the average salary, plus $25, multiplied by so much of the total service as exceeds five years but does not exceed ten years, plus (3) the larger of (A) 2 per centum of the average salary multiplied by so much

of the total service as exceeds ten years, or (B) 1 per centum of the average salary, plus $25, multiplied by so much of the total service as exceeds ten years. Each annuity is stated as an annual amount, one-twelfth of which, fixed at the nearest dollar, constitutes the monthly rate payable on the first business day of the month after the month or other period for which it has accrued. Annuities payable to any retired teacher who has become eligible for retirement because of age as defined in section 31–723 shall be payable during the lifetime of the annuitant. Annuities payable to any teacher retired on account of disability shall be subject to the conditions set forth under section 31–724.

(b) Any teacher retiring under the provisions of section 31–723 or 31–724 may at the time of retirement, elect to receive in lieu of the life annuity described herein one of the following:

(1) A reduced annuity and an annuity after death payable to his or her surviving widow or widower designated by such teacher at time of retirement equal to 55 per centum of such life annuity. The life annuity of the teacher making such election shall be reduced by 2½ per centum of so much thereof as does not exceed $3,600 and by 10 per centum of so much thereof as exceeds $3,600. The annuity of such widow or widower shall begin on the day after the retired teacher dies. Such annuity and any right thereto shall terminate on the last day of the month before (A) the widow or widower dies, or (B) the widow or widower remarries before becoming sixty years of age. In the case of a surviving widow or widower whose annuity under this paragraph is terminated because of remarriage before becoming sixty years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, if—

(i) the surviving widow or widower elects to receive the annuity which was terminated instead of a survivor benefit to which the surviving widow or widower may be entitled, under this subchapter or another retirement system for employees of the Federal or District Government, by reason of the remarriage; and

(ii) any lump sum paid on termination of the annuity is returned to the teachers' retirement and annuity fund established under section 31–722.

(2) If unmarried and in good health, a reduced annuity payable to him during his life, and an annuity after his death payable to a survivor annuitant having an insurable interest in such teacher, duly designated in writing and filed with the Auditor of the District of Columbia at the time of retirement, during the life of such survivor annuitant equal to 55 per centum of such reduced annuity. The annuity of the survivor annuitant shall commence on the day after the retired teacher dies, and such annuity and any right thereto shall terminate on the last day of the month before the death of the survivor annuitant. The annuity hereunder payable to the teacher shall be 90 per centum of the life annuity otherwise payable if the survivor annuitant is the same age or older than the annuitant, or is less than five years younger than the annuitant; 85 per centum if the survivor annuitant is five but less than ten years younger; 80 per centum if the survivor annuitant is ten but less than fifteen years younger; 75 per centum if the survivor annuitant is fifteen but less than twenty years younger; 70 per centum if the survivor annuitant is twenty but less than twenty-five years younger; and 60 per centum if the survivor annuitant is twenty-five or more years younger. No such election shall be valid until the retiring teacher shall have satisfactorily passed a physical examination under the direction of the Director of Public Health of the District of Columbia, as prescribed by the Board of Education. No person shall be eligible to receive an annuity under subsection (b) of section 31–729 based upon the service of the same teacher covering the same period of time.

* * * * *

(As amended Dec. 29, 1967, Pub. L. 90–231, § 1(4), 81 Stat. 748; May 22, 1970, Pub. L. 91–263, § 1(f), 84 Stat. 258.)

AMENDMENTS

1970—Section 1(f), act May 22, 1970, Pub. L. 91–263, amended subsection (b) of the section as follows:

(1) Struck out of the second sentence of paragraph (1) ", excluding any increase because of retirement under section 31–724,".

(2) Increased survivor annuity by substituting "55 per centum" for "50 per centum" in paragraph (2).

1967—Section 1(4), Act Dec. 29, 1967, Pub. L. 90–231, amended the section as follows:

(1) The second sentence of subsection (a) was amended to read as above set out. Before this amendment the said sentence read as follows: "Annuities granted under the terms of this subchapter shall accrue monthly and shall be due and payable in monthly installments at the beginning of the month following the month for which the annuity shall have accrued, such monthly installments being computed to the nearest dollar."

(2) By striking out the last sentence of par. (1) of subsection (b) and inserting the new matter above set out starting with the words "The annuity" and ending with "section 31–722." The said sentence before this amendment read as follows: "The annuity of such widow or widower shall begin on the first day of the month immediately following the month in which the death of the retired teacher occurs or the first day of the month following the widow's or widower's attaintment of age fifty, whichever is the later, and such annuity or any right thereto shall terminate upon his or her death or remarriage."

(3) By striking out in the first sentence of par. 2 of subsection (b) "and upon the death of such survivor annuitant all payments shall cease and no further annuity shall be due and payable" and by adding after such sentence the new sentence above set out beginning with the words "The annuity" and ending with the word "annuitant".

EFFECTIVE DATE AND APPLICABILITY OF 1970 AMENDMENT

See sections 2(a) and 5(a) of act May 22, 1970, set out as notes under section 31–721.

CROSS REFERENCE

For definitions of "Commissioners of the District of Columbia" or "Board of Commissioners of the District of Columbia", see section 31–739c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–723, 31–724, 31–725b, 31–726, 31–728 to 31–730, 31–739, 31–1542, 31–1603.

§ 31–725a. Recomputation of benefits—Computation of average annual salary—Increase to be straight life annuity.

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

§ 31–725b. Annuity increases granted by act Oct. 24, 1962—Effective date.

CODIFICATION

Section was not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

§ 31–726. Annuity of teachers retired for disability.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–724, 31–1542. 31–1603.

§ 31–727. Appropriations calculation.

The amount of each year's appropriation shall be such amount as is necessary to maintain during such fiscal year a balance in the teachers' retirement fund approximately equal, to the nearest million dollars, to the balance in that fund on June 30, 1969, or such amount as is necessary to maintain the equity in such fund of all teachers, active and retired, whichever amount is greater. If at any time the balance in the Teachers' Retirement Fund is not sufficient to meet all obligations against such fund, the fund will have a claim on the District of Columbia revenues to the extent necessary to meet such obligations. (Aug. 7, 1946, 60 Stat. 879, ch. 779, § 7; Aug. 4, 1947, 61 Stat. 750, ch. 476; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 6; May 22, 1970, Pub. L. 91–263, § 4, 84 Stat. 260.)

AMENDMENT

1970—Section 4, act May 22, 1970, Pub. L. 91–263, amended section to read as above set out. Before this amendment, the section read as follows:

"The amount of each year's appropriation shall be calculated, on an actuarial basis, as a level percentage of the pay roll of all participants which shall be adequate to cover the liability normally accrued plus a further amount equal to the interest on the unfounded accrued liability."

EFFECTIVE DATE OF 1970 AMENDMENT

See section 5(c) of act May 22, 1970, set out as a note under section 31–721.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1603.

§ 31–728. Term of service—Reduction of annuity—Contributions on leave—Monthly deposits.

The years of service which form the basis for determining the amount of the annuity provided in section 31–725(a) shall be computed from the date of original probationary appointment as a teacher in the public schools of the District of Columbia, including so much of any authorized leaves of absence without pay beginning on May 1, 1952, as does not exceed six months in the aggregate in any fiscal year, plus any service credit that may be allowed under the provisions of this section: *Provided,* That the total credit granted for leaves of absence without pay shall not exceed one year: *Provided further,* That deposits equal to 5 per centum of those portions of salary received between July 1, 1949, and May 1, 1952, for which service credit was not earned may be made, and service credit received accordingly. In computing an annuity under section 31–725(a) the total service of a teacher shall include days of unused sick leave credited to him. No deposit may be required for days of unused sick leave included in a teacher's total service under the preceding sentence. Days of unused sick leave shall not be counted in determining a teacher's average salary or his eligibility for an annuity. In computing the length of service of retiring teachers credit may be given, year for year, for (a) public-school service or its equivalent outside the District of Columbia but not to exceed ten years; (b) continuous temporary service in the public schools of the District of Columbia immediately prior to probationary appointment; (c) service in the government of the District of Columbia or the Government of the United States allowable under sections 1308, 3323, and 8331–8348 of title 5, U.S. Code [relating to retirement of government employees]; (d) periods of honorable active service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States (but not the National Guard except when ordered to active duty in the service of the United States) prior to the date of the separation upon which title to annuity is based; except that, if a teacher is awarded retired pay on account of military service, his military service shall not be included unless such retired pay is awarded on account of a service-connected disability (1) incurred in combat with an enemy of the United States or (2) caused by an instrumentality of war and incurred in line of duty during an enlistment or employment as provided in Veterans Regulation Numbered 1 (a), part 1, paragraph 1, or is awarded under title III of Public Law 910, Eightieth Congress; (e) all educational leaves of absence with part pay authorized by the Board of Education in accordance with sections 31–632 to 31–637; and (f) continuous temporary service as an employee of any cafeteria or lunchroom operated in the public school buildings of the District of Columbia during any period prior to the date on which such cafeteria or lunchroom is placed under the Office of Central Management, Department of Food Services, District of Columbia, and immediately prior to probationary appointment as a teacher in the public schools of the District of Columbia: *Provided, however,* That that portion of the annuity which results from credit for service allowable under (a) and (c) of this section shall be reduced by the amount of any annuity which the retired teacher is entitled to receive under any Federal, State, or municipal retirement or pension system in respect to such service, except that such portion of the annuity after reduction shall not be less than the annuity purchasable with the deposit which the teacher is required to make under the provisions of this section in order to obtain credit for such service: *Provided further,* That no credit for service prescribed in this section, with the exception of periods of honorable service in the Army, Navy, Air Force, Marine Corps, or Coast Guard of the United States and all educational leaves of absence with part pay authorized by the Board of Education in accordance with sections

31–632 to 31–637, shall be given to any teacher entering the said public schools after June 30, 1926, until he shall have deposited to the credit of the teachers' retirement and annuity fund of the District of Columbia a sum equal to the accumulated contributions and interest which he would have had credited to his individual account if such service had been rendered on active duty in the public schools of the District of Columbia, said contributions to be based on the average annual salary of the class to which the teacher is appointed: *Provided further,* That all contributions to the retirement fund made by any teacher on educational leave with part pay shall be determined in accordance with the provisions of section 31–721, but otherwise no provision of this subchapter shall be interpreted to deprive any teacher employed by the Board of Education of any rights or benefits allowable under sections 31–632 to 31–637. If the teacher so elects he may deposit the required sum in the teacher's retirement and annuity fund in monthly installments with interest at 3 per centum per annum compounded annually, upon making a claim with the Commissioner of the District of Columbia, or his designated agent. Except as otherwise provided in this paragraph, this section shall not be construed to allow any teacher more than one year's credit for all services rendered in any one fiscal year.

A teacher who during the period of any war, or of any national emergency as proclaimed by the President or declared by the Congress, has left or leaves his position to enter the military service, as defined in this section, shall not be considered, for the purposes of this subchapter, as separated from his teaching position by reason of such military service, unless he shall apply for and receive a lump-sum benefit under this subchapter, except that such teacher shall not be considered as retaining his teaching position beyond six months after the date of the approval of this Act or the expiration of five years of such military service, whichever is later.

Nothing in this subchapter shall affect the right of a teacher to retired pay, pension, or compensation in addition to the annuity herein provided. (Aug. 7, 1946, 60 Stat. 879, ch. 779, § 8; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 7; Aug. 5, 1955, 69 Stat. 536, ch. 575, § 2; June 4, 1957, 71 Stat. 47, Pub. L. 85–46, § 1; Dec. 29, 1967, Pub. L. 90–231, § 1(5), 81 Stat. 748; May 22, 1970, Pub. L. 91–263, § 1(b), 84 Stat. 257.)

CODIFICATION

In the first sentence, "May 1, 1952" was substituted for "the effective date of this amendatory Act" on authority of section 11 of the act Mar. 7, 1952, set out as a note under section 31–721.

AMENDMENTS

1970—Section 1(b), act May 22, 1970, Pub. L. 91–263, inserted in first paragraph provisions granting service credit for unused sick leave.

1967—Section 1(5), act Dec. 29, 1967, Pub. L. 90–231 struck out the following: "31–632 to 31–637: *Provided further,* That if the teacher so elects, he may deposit the required sum in the fund in any number of monthly installments not exceeding fifty with interest at 3 per centum per annum compounded annually, upon making claim with the Auditor, District of Columbia, within one year of the effective date of this subchapter, or within one year after the original probational appointment or reinstatement in the school service, or within two years after the date of honorable discharge from the military service: *And provided further,* That nothing contained herein shall be construed" and inserted in lieu the language above set out beginning with "Act of June 12, 1940" [sections 31–632 to 31–637] and ending with "This section, shall not be construed"; relating to monthly deposits into the retirement and annuity fund.

EFFECTIVE DATE AND APPLICABILITY OF 1970 AMENDMENT

See sections 2(a) and 5(a) of act May 22, 1970, set out as notes under section 31–721.

CROSS REFERENCE

For definitions of "Commissioners of the District of Columbia" or "Board of Commissioners of the District of Columbia", see section 31–739c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–723, 31–1603.

§ 31–729. Deferred annuity—Refunds—Deposit of amount withdrawn—Annuity to survivors—Termination and restoration of annuity—Determination of dependency and disability.

(a) Should any teacher to whom this subchapter applies, after completing five years of eligible service and before becoming eligible for retirement, become separated from the service, such teacher may elect to receive a deferred annuity, computed as provided in section 31–725, beginning at the age of sixty-two years and terminating on the date of his death: *Provided,* That any teacher who becomes separated from the public schools of the District of Columbia for other than retirement purposes and who does not elect to receive a deferred annuity as provided for in this section, shall receive as soon as practicable after separation the refund of deductions, deposits, or redeposits with interest thereon, or any voluntary contributions made under the provisions of section 31–721, with interest: *Provided further,* That no teacher who shall withdraw the amount of his deductions, deposits, or redeposits under this section shall, after reinstatement, be entitled to credit for previous service unless he shall deposit in the fund the amount so withdrawn by him: *And provided further,* That the amount required to be so deposited may be paid by the teacher, if he so elects, in any number of monthly installments, not exceeding one hundred, with interest at 3 per centum compounded annually.

(b) (1) In the event any teacher to whom this subchapter applies shall die subsequent to March 6, 1952, after completing at least eighteen months of eligible service and is survived by a widow, or dependent widower, such widow or dependent widower shall be paid an annuity beginning the day after the teacher dies, equal to 55 per centum of the amount of an annuity computed as provided in subsection (a) of section 31–725 with respect to such teacher, except that in the computation of the annuity under such subsection the annuity of the teacher shall be at least the smaller of (i) 40 per centum of his average salary, or (ii) the sum obtained under such subsection after increasing his eligible service of the type last performed by the period elapsing between the date of death and the date he would have become sixty years of age. Such annuity and any right thereto shall terminate on the last day of the month before (A) the widow or dependent widower dies, (B) the widow or dependant widower remarries before becoming sixty years of age, or (C)

the dependent widower becomes capable of self-support. In the case of a widow or dependent widower whose annuity under this paragraph is terminated because of remarriage before becoming sixty years of age, annuity at the same rate shall be restored commencing on the day the remarriage is dissolved by death, annulment, or divorce, if—

(i) the widow or dependent widower elects to receive the annuity which was terminated instead of a survivor benefit to which the widow or dependent widower may be entitled, under this subchapter or another retirement system for employees of the Federal or District Government, by reason of the remarriage; and

(ii) any lump sum paid on termination of the annuity is returned to the teachers' retirement and annuity fund established under section 31–722.

(2) If any teacher to whom this subchapter applies shall die after completing at least eighteen months of eligible service or after having retired under the provisions of section 31–723 or section 31–724 and is survived by a wife or husband, each surviving child shall be paid an annuity equal to the smallest of (a) 60 per centum of the teacher's average salary divided by the number of children, (b) $900, or (c) $2,700 divided by the number of children. If such teacher is not survived by a wife or husband, each surviving child shall be paid an annuity equal to the smallest of (a) 75 per centum of the teacher's average salary divided by the number of children, (b) $1,080, or (c) $3,240 divided by the number of children. The child's annuity shall commence on the first day after the teacher dies. Such annuity and the right thereto terminate on the last day of the month before the child—

(A) becomes eighteen years of age unless he is then a student as described or incapable of self-support;

(B) becomes capable of self-support after becoming eighteen years of age unless he is then such a student;

(C) becomes twenty-two years of age if he is then such a student and capable of self-support;

(D) ceases to be such a student after becoming eighteen years of age unless he is then incapable of self-support; or

(E) dies or marries;

whichever first occurs.

Upon the death of the surviving wife or husband or termination of the annuity of the child, the annuity of any other child or children shall be recomputed and paid as though such wife, husband, or child had not survived the teacher.

(3) In the event any teacher to whom this subchapter applies shall die subsequent to March 6, 1952, after completing at least eighteen months of eligible service, and is not survived by a widow, a dependent widower, and/or children, but is survived by dependent parents or a dependent father or a dependent mother, such surviving dependent parents or parent shall be paid an annuity, beginning the first day of the month following the death of the teacher, equal to 55 per centum of the amount of an annuity computed as provided in subsection (a) of section 31–725 with respect to such teacher, except that, in the computation of the annuity under such subsection, the annuity of the teacher shall be at least the smaller of (i) 40 per centum of his average salary, or (ii) the sum obtained under such subsection after increasing his eligible service of the type last performed by the period elapsing between the date of death and the date he would have become sixty years of age: *Provided,* That such payments shall be made jointly to surviving dependent parents and payment of such annuity shall continue after the death of either dependent parent: *Provided further,* That all such payments or any right thereto shall cease upon the death of both dependent parents.

(c) As used in this section—

(1) The term "widow" means a surviving wife of an individual, who either shall have been married to such individual for at least two years immediately preceding his death, or is the mother of issue by such marriage.

(2) The term "child" means—

(A) an unmarried child under eighteen years of age, including (i) an adopted child, and (ii) a stepchild or recognized natural child who lived with the teacher in a regular parent-child relationship;

(B) such unmarried child regardless of age who is incapable of self-support because of mental or physical disability incurred before age eighteen; or

(C) such unmarried child between eighteen and twenty-two years of age who is a student regularly pursuing a full-time course of study or training in residence in a high school, trade school, technical or vocational institute, junior college, college, unversity, or comparable recognized educational institution.

For the purpose of this paragraph and paragraph (2) of subsection (b) of this section, a child whose twenty-second birthday occurs before July 1 or after August 31 of a calendar year, and while he is regularly pursuing such a course of study or training, is deemed to have become twenty-two years of age on the first day of July after that birthday. A child who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than five months and if he shows to the satisfaction of the Commissioner of the District of Columbia that he has a bona fide intention of continuing to pursue a course of study or training in the same or different school during the school semester (or other period into which the school year is divided) immediately after the interim.

(3) The term "dependent parents" means the natural parents of a teacher who were receiving one-half or more of their total income from said teacher immediately preceding the death of said teacher.

(4) The term "dependent father" or "dependent mother" means the natural father or natural mother of a teacher who was receiving one-half or more of his or her total income from said teacher immediately preceding the death of said teacher.

(5) The term "widower" means the surviving husband of a teacher who was married to such

teacher for at least two years immediately preceding her death or is the father of issue by such marriage. The term "dependent widower" means a "widower" who is incapable of self-support by reason of mental or physical disability, and who received more than one-half of his support from such teacher.

(6) Questions of dependency and disability arising under this section shall be determined by the Board of Education and its decisions with respect to such matters shall be final and conclusive and shall not be subject to review.

(Aug. 7, 1946, 60 Stat. 880, ch. 779, § 9; Mar. 6, 1952, 66 Stat. 19, ch. 95, § 8; June 4, 1957, 71 Stat. 47, Pub. L. 85–46, § 1; Oct. 24, 1962, 76 Stat. 1237, Pub. L. 87–881, title II, § 203 (b), (c), (d), (e); Sept. 2, 1964, 78 Stat. 886, Pub. L. 88–575, § 202; Dec. 29, 1967, Pub. L. 90–231, 1(6), 81 Stat. 748; May 22, 1970, Pub. L. 91–263, § 1(e), 84 Stat. 258.)

AMENDMENTS

1970—Section 1(e), act May 22, 1970, Pub. L. 263, amended the section as follows:

(1) Provided in the first sentence of subsection (b)(1) for entitlement to a survivor annuity after an 18-month rather than 5-year period of eligible service and prescribed as the annuity at least the smaller of two computations when computing the annuity under section 31–725(a).

(2) Increased the annuity of a surviving child by substituting "eighteen months" for "five years" of eligible service, by elementary requirement that surviving child must have received more than one-half of his support from the teacher, and by substituting "60 per centum", "$900", and "$2,700" for "40 per centum", "$600", and "$1,800" in the first sentence of subsection (b)(2); and by substituting "75 per centum", "$1,080" and "$3,240" for "50 per centum", "$720", and "$2,160" in the second sentence of subsection (b)(2).

(3) Increased the annuity of a dependent parent by substituting "eighteen months" for "five years" of eligible service, by substituting "55 per centum of the amount of an annuity" for "one-half the amount of an annuity", and by prescribing as the annuity at least the smaller of two computations, in subsection (b)(3).

1967—Section 1(6), act Dec. 29, 1967, amended section as follows:

(1) In subsection (a) struck out "after having served in the public schools of the District of Columbia for a total period of not less than five years" and inserting in lieu "after completing five years of eligible service", also in subsection (a) by striking out "beginning at the age of sixty-two computed as provided in section 5 of this Act" [31–725] and inserting in lieu "computed as provided in section 5 of this Act, beginning at the age of sixty-two years and terminating on the date of his death."

(2) In subsection (b)(1) struck out the language relating to at least five years of service and inserted in lieu "after completing five years of eligible service" also by striking out in (b)(1) "first day of the month following the death of the teacher"; and inserting "day after the teacher dies" by striking out in (b)(1) the language beginning with "teacher: Provided" to the end of the paragraph and inserting in lieu the new matter beginning with "teacher. Such etc." relating to termination and restoration of annuity including clauses (i) and (ii); by striking out par. (b)(2) and redesignating pars. (b)(3) as (b)(2) and (b)(4) as (b)(3); by striking out in (b)(2) as so redesignated the words "five years of service in the public schools of the District of Columbia" and inserting "five years of eligible service"; by striking out the third sentence in (b)(2) relating to the child's annuity; and inserted the new language relating to the child's annuity; by striking out in the first sentence of (b)(3) the language relating to at least five years of service and inserted in lieu "after completing five years of eligible service."

(3) Amended the 2d par. of sub. sec. (c) defining a child to read as above set out.

EFFECTIVE DATE AND APPLICABILITY OF 1970 AMENDMENT

For effective date generally, see section 5(a) of act May 22, 1970, set out as a note under section 31–721.

Section 2(c)(1) of act May 22, 1970, provided: "The amendment made by subsection (e)(2) of section 1 of this Act [to subsection (b)(2) of this section] shall become effective on the first day of the first month which begins after October 20, 1969."

For applicability of amendment of subsections (b)(1) and (b)(3) of this section, see section 2(a) of act May 22, 1970, set out as a note under section 31–721.

EFFECTIVE DATE OF 1970 AMENDMENT; RECOMPUTED ANNUITY OF SURVIVING CHILD

Section 2(c) of act May 22, 1970, Pub. L. 91–263, provided:

"(c)(1) The amendment made by subsection (e)(2) of section 1 of this Act [to subsection (b)(2) of this section] shall become effective on the first day of the first month which begins after October 20, 1969.

"(2) The annuity of each surviving child who, immediately prior to the effective date of such amendment is receiving an annuity under subsection (b)(2) of section 9 of such Act (D.C. Code, sec. 31–729(b)(2)) or under a comparable provision of any prior law, or who hereafter becomes entitled to receive annuity under such Act shall be recomputed effective on such date, or computed from commencing date if later, in accordance with such amendment. No increase allowed or in force prior to such date shall be included in the computation or recomputation of any such annuity. This paragraph shall not operate to reduce any annuity."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

For definitions of "Commissioners of the District of Columbia" or "Board of Commissioners of the District of Columbia", see section 31–739c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–724, 31–725, 31–730, 31–733, 31–739a, 31–1603.

§ 31–730. Beneficiaries—Order of precedence for payment of lump-sum benefits—Payment of lump-sum credit—Definitions.

(a) Under regulations prescribed by the Commissioner of the District of Columbia, a present or former teacher may designate a beneficiary or beneficiaries for the purpose of this subchapter.

(b) Lump-sum benefits authorized by subsections (c), (d), and (e) of this section shall be paid in the following order of precedence, to the person or persons surviving the teacher and alive at the date title to the payment arises, and the payment bars recovery by any other person:

First, to the beneficiary or beneficiaries designated by the teacher in a signed and witnessed writing received by the Commissioner of the District of Columbia before his death.

Second, if there is no designated beneficiary, to the widow or widower of the teacher.

Third, if none of the above, to the child or children of the teacher and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the teacher or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the teacher.

Sixth, if none of the above, to such other next of kin of the teacher as the Commissioners of the District of Columbia determine to be entitled under the laws of the domicile of the teacher at the date of his death.

For the purpose of this subsection, the term "child" includes a natural child and an adopted child, but does not include a stepchild.

(c) If—

(1) a teacher dies—

(A) without a survivor, or

(B) with a survivor or survivors and the right of all survivors terminates before a claim for survivor annuity is filed; or

(2) a former teacher not retired dies,

the lump sum credit shall be paid.

(d) If all annuity rights under this subchapter based on the service of a deceased teacher terminate before the total annuity paid equals the lump-sum credit, the difference shall be paid.

(e) If an annuitant dies, any annuity accrued and unpaid shall be paid.

(f) For purposes of this section, the term "lump-sum credit" means the unrefunded amount consisting of—

(1) retirement deductions made under this subchapter from the salary of a teacher;

(2) amounts deposited into the teachers' retirement and annuity fund by a teacher covering earlier service; and

(3) interest on the deductions and deposits made with respect to service which aggregates more than one year but excluding interest for the fractional part of a month in the total service.

(Aug. 7, 1946, 60 Stat. 880, ch. 779, § 10; Mar. 6, 1952, 66 Stat. 21, ch. 95, § 9; Dec. 29, 1967, Pub. L. 90–231, § 1(7), 81 Stat. 750.)

AMENDMENT

1967—Section 1(7), act Dec. 29, 1967, amended section to read as above set out.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

For definitions of "Commissioners of the District of Columbia" or "Board of Commissioners of the District of Columbia", see section 31–739c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–721, 31–725, 31–1603.

§§ 31–731, 31–732.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 31–1603.

§ 31–733. Definitions.

The term "teacher," under this subchapter, shall include all teachers permanently employed by the Board of Education in the public day schools of the District of Columbia, including other educational employees whose salaries are established in the District of Columbia Teachers' Salary Act of 1945, as amended, except the employees of the Department of School Attendance and Work Permits; whenever the pronoun "his" occurs in this subchapter it shall be construed to mean both male and female; and the term "annual salary" shall be construed to mean the total annual income received during the fiscal year for service rendered in the public day schools (not including summer schools) of the District of Columbia, including basic salary, automatic increases, and longevity allowances, provided for in the District of Columbia Teachers' Salary Act of 1945, as amended, and all wartime additional compensation or bonus, and this definition of "annual salary" shall not be construed to affect any deductions which have been made prior to the effective date of this subchapter from any teacher's "annual salary" as defined in subchapter I of this chapter.

The term "average salary" shall mean the largest annual rate resulting from averaging, over any period of three consecutive years of eligible service, or in the case of a survivor annuity under section 31–729(b) based on service of less than three years, over the total eligible service in the public schools of the District of Columbia, a teacher's rates of annual salary in effect during such period, with each rate weighted by the time it was in effect.

For purposes of this subchapter, the term "eligible service" means service in the public schools of the District of Columbia under a temporary, probationary, or permanent appointment to a position, the rate of compensation of which is prescribed in the salary schedule contained in section 31–1501. (Aug. 7, 1946, 60 Stat. 881, ch. 779, § 13; June 4, 1957, 71 Stat. 48, Pub. L. 85–46, § 1; Dec. 29, 1967, Pub. L. 90–231, § 1(8), 81 Stat. 751; May 22, 1970, Pub. L. 91–263, § 1(a), 84 Stat. 257.)

AMENDMENTS

1970—Section 1(a), act May 22, 1970, Pub. L. 91–263, amended definition of "average salary" by reducing the number of years of eligible service from 5 to 3 consecutive years, and by providing for averaging the rate of annual salary over the total eligible service in the public schools of the District of Columbia in the case of a survivor annuity under section 31–729(b) based on service of less than 3 years.

1967—Section 1(8), act Dec. 29, 1967, Pub. L. 90–231, amended section by striking out "creditable service" and inserting in lieu "eligible service" and by adding at the end the paragraph defining "eligible service".

EFFECTIVE DATE AND APPLICABILITY OF 1970 AMENDMENT

See sections 2(a) and 5(a) of act May 22, 1970, set out as notes under section 31–721.

CROSS REFERENCE

For definitions of "Commissioners of the District of Columbia" or "Board of Commissioners of the District of Columbia", see section 31–739c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–725, 31–1603.

§ 31–734. Records and accounts—Report to Congress—Appropriation estimates.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1603.

§ 31–735. Transfer of appropriations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1603.

§ 31–736. Rules and regulations.

COMMISSIONERS OF THE DISTRICT OF COLUMBIA, DEFINED

Section 31–739c provides in part: "Wherever the term 'Commissioners of the District of Columbia' is used in sections 31–721 and 31–736, as amended, such term shall be deemed to mean the District of Columbia Council".

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(240) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with regard to making rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

CROSS REFERENCE

For definitions of "Commissioners of the District of Columbia" or "Board of Commissioners of the District of Columbia", see section 31–739c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1603.

§§ 31–737, 31–738.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 31–1603.

§ 31–739. Prior retirements—Salary basis—Straight life annuity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–738, 31–1542, 31–1603.

§ 31–739a. Adjustment of annuities on basis of price index—Computation—Definitions.

(a) Effective December 1, 1965, each annuity payable from the fund which has a commencing date not later than January 1, 1966, shall be increased by (1) the per centum rise in the price index, adjusted to the nearest one-tenth of 1 per centum, determined by the Board of Commissioners of the District of Columbia on the basis of the annual average price index for calendar year 1962 and the price index for the month of July 1965 plus (2) 6½ per centum if the commencing date (or in the case of a survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred on or before October 1, 1956, or 1½ per centum if the commencing date (or in the case of the survivor of a deceased annuitant the commencing date of the annuity of the retired employee) occurred after October 1, 1956. The month used in determining the increase based on the per centum rise in the price index under this subsection shall be the base month for determining the per centum change in the price index until the next succeeding increase occurs.

(b) Each month after the first increase under this section, the Board of Commissioners of the District of Columbia shall determine the per centum change in the price index. Effective the first day of the third month which begins after the price index shall have equaled a rise of at least 3 per centum for three consecutive months over the price index for the base month, each annuity payable from the fund has a commencing date not later than such effective date shall be increased by 1 per centum plus the per centum rise in the price index (calculated on the highest level of the price index during the three consecutive months) adjusted to the nearest one-tenth of 1 per centum.

(c) Eligibility for an annuity increase under this section shall be governed by the commencing date of each annuity payable from the fund as of the effective date of an increase, except as follows:

(1) Effective from its commencing date, an annuity payable from the fund to an annuitant's survivor (other than a child entitled under section 31–729(b)(3), which annuity commences the day after the annuitant's death and after the effective date of the first increase under this section, shall be increased by the total per centum increase the annuitant was receiving under this section at death.

(2) For the purpose of computing the annuity of a child under section 31–729(b)(2) that commences after October 31, 1969, the items $900, $1,080, $2,700, and $3,240 appearing in section 31–729(b)(2) shall be increased by the total per centum increases allowed and in force under this section on or after such day and, in case of a deceased annuitant, the items 60 per centum and 75 per centum appearing in section 31–729(b)(2) shall be increased by the total per centum allowed and in force to the annuitant under this section on or after such day.

* * * * *

(As amended Dec. 29, 1967, Pub. L. 90–231, § 1(9), 81 Stat. 751; May 22, 1970, Pub. L. 91–263, § 1(c), 84 Stat. 257.)

CODIFICATION

In subsection (c)(2), the words "after October 31, 1969" were substituted for "on or after the first day of the first month that begins on or after the effective date of the District of Columbia Teachers' Retirement Amendments of 1970" on authority of section 5(a) of act May 22, 1970, set out as a note under section 31–721.

AMENDMENTS

1970—Section 1(c), act May 22, 1970, Pub. L. 91–263, amended the section as follows:

(1) By inserting "1 per centum plus" immediately after "shall be increased" in subsection (b).

(2) By amending paragraph (2) of subsection (c) to read as above set out. Before this amendment, the said paragraph read as follows:

(2) For purposes of computing an annuity which commences after the effective date of the first increase under this section to a child under section 31–729(b)(3), the items $600, $720, $1,800, and $2,160 appearing in section 31–729(b)(3) shall be increased by the total per centum increase allowed and in force under this section for employee annuities which commenced after October 1, 1956, and, in case of a deceased annuitant, the items 40 per centum and 50 per centum appearing in section 31–729(b)(3) shall be increased by the total per centum increase allowed and in force under this section to the annuitant at death."

1967—Section 1(9), Act Dec. 29, 1967, Pub. L. 90–231, amended the first sentence by striking out "December 30, 1965" and inserting in lieu "January 1, 1966".

APPLICABILITY OF 1970 AMENDMENT

Section 2(b) of act May 22, 1970, Pub. L. 91–263, provided: "The amendment made by subsection (c)(1) of section 1 of this Act [to subsection (b) of this section] shall apply only to determinations of amounts of annuity increases which are made after October 20, 1969, under section 21 of the Act of August 7, 1946 (D.C. Code, sec. 31–739a)."

EFFECTIVE DATE OF 1970 AMENDMENT

See section 5(a) of act May 22, 1970, set out as a note under section 31–721.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

For definitions of "Commissioners of the District of Columbia" or "Board of Commissioners of the District of Columbia", see section 31–739c.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–722, 31–1603.

§ 31–739b. Omitted.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1603.

§ 31–739c. Commissioners of the District of Columbia and Board of Commissioners of the District of Columbia, defined.

Wherever the term "Commissioners of the District of Columbia" is used in sections 31–721 and 31–736, such term shall be deemed to mean the District of Columbia Council. Wherever the term "Board of Commissioners of the District of Columbia", or "Commissioners of the District of Columbia" is otherwise used in this subchapter, as amended or supplemented, such term shall be deemed to mean the Commissioner of the District of Columbia. (Aug. 7, 1946, ch. 779, § 22, as added Dec. 29, 1967, Pub. L. 90–231, § 1(10), 81 Stat. 751.)

CODIFICATION

Section 31–725a, 31–725b, 31–740 to 31–745 were not enacted as a part of the District of Columbia Teachers' Retirement Act, 1946, which comprises this subchapter.

§ 31–739d. Increased annuities for certain surviving spouses.

Effective on (a) November 1, 1969, or (b) the commencing date of annuity, whichever is later, the annuity of each surviving spouse whose entitlement to annuity payable from the District of Columbia teachers' retirement and annuity fund resulted from the death of:

(1) a teacher prior to October 24, 1962, or

(2) a retired teacher whose retirement was based on a separation from service prior to October 24, 1962,

shall be increased by 10 per centum. (Aug. 7, 1946, ch. 779, § 23, as added May 22, 1970, Pub. L. 91–263, § 1(g), 84 Stat. 258.)

CODIFICATION

In clause (a), "November 1, 1969" was substituted for "the first day of the first month which begins after October 20, 1969".

EFFECTIVE DATE AND APPLICABILITY

See sections 2(a) and 5(a) of act May 22, 1970, set out as notes under section 31–721.

§ 31–740. Waiver of annuity—Revocation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§§ 31–741, 31–742.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 31–743, 31–744.

§ 31–743. Effective dates of annuities provided by sections 31–741 and 31–742—Computation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–744.

§ 31–744. Annuities under sections 31–741 to 31–743 to be paid from District of Columbia teachers retirement and annuity fund—Conditions under which annuities and increases terminate after July 1, 1960.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–743.

Chapter 8.—USE OF SCHOOL BUILDINGS

§ 31–801. Control by Board of Education of school buildings and grounds for purposes other than use as schools—Rules and regulations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–802.

Chapter 9.—MEDICAL AND DENTAL COLLEGES

SUBCHAPTER I.—REGISTRATION

Sec.

31–901. Medical and dental colleges not incorporated by special act of Congress to register with Commissioners—Permit.
31–902. Application for registration and permit—Regulations—Inquiry as to equipment.
31–903. Penalty for failure to register and obtain permit.
31–904. Injunction proceedings—Duty of Commissioners—Jurisdiction of court.
31–905. Repeal provisions.

SUBCHAPTER II.—FINANCIAL ASSISTANCE

31–921. Purpose
31–922. Authorization of grants to Commissioner—Limitations—Appropriations authorized.
31–923. Application for grants—Time for filing—Contents.
31–924. Regulations to prescribe basis for determining number of students.
31–925. Method of paying grants under § 31–922.
31–926. Commissioner to make payments to medical and dental schools—Limitations.
31–927. Application for payments—Time for filing—Contents.
31–928. Method of making payments under § 31–926.
31–929. Definitions.

SUBCHAPTER I.—REGISTRATION

§ 31–901. Medical and dental colleges not incorporated by special act of Congress to register with Commissioners—Permit.

It shall be unlawful for any medical or dental college claiming the authority to confer, or actually conferring, the degree of doctor of medicine, or doctor of dental surgery, not incorporated by a special Act of Congress, to conduct its business in the District of Columbia, unless such college shall be registered by the Commissioners of the District of Columbia and granted by them a written permit to commence or continue business in said District in compliance with the requirements of this subchapter. (May 4, 1896, 29 Stat. 112, ch. 154, § 1.)

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

Institutions of learning generally, see § 29–401 et seq.

Regulations—Inquiry as to equipment.

§ 31–902. Application for registration and permit—

It shall be the duty of the proper officers of any such college, before commencing or continuing business, to apply to the said Commissioners for registration and a permit to commence or continue business; and said Commissioners are hereby authorized and required to make such regulations concerning the form of such application, the evidence to be adduced in support thereof, and the method of taking such evidence as they may deem best, and shall have power, and it shall be their duty, to give public notice of all hearings upon such applications; and no registration and permit shall be granted until after the Commissioners shall have, by the inquiry and hearing hereinbefore provided for and such other inquiry as they may see fit to make, satisfied themselves that all such medical or dental colleges are fully equipped, both by the character and fitness of the faculty and the sufficiency of their appliances, to give suitable and sufficient instruction in the theory and practice of medicine or dental surgery. (May 4, 1896, 29 Stat. 113, ch. 154, § 2.)

REGISTRATION OF UNINCORPORATED COLLEGES DOING BUSINESS ON MAY 4, 1896

Section 3 of act May 4, 1896, required the proper officers of every medical or dental college not incorporated by a special act of Congress which was doing business in the District on May 4, 1896, to apply for such certificate and registration within thirty days of May 4, 1896, and to prohibit any such college hereafter sought to be opened in said District from commencing business without first obtaining such registration and permit.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(241) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners under this section in the particulars described in par. 241, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 31–903. Penalty for failure to register and obtain permit.

Such of the officers and of the faculty of any such medical or dental college in existence on May 4, 1896, and of every such college thereafter sought to be opened in said District, which shall continue or commence to offer instruction in such capacity without first obtaining registration and permit, as hereinbefore provided, shall be deemed guilty of a misdemeanor, and upon conviction thereof in the Superior Court of the District of Columbia, upon an information similar to that filed in the case of violations of the police regulations made by the said Commissioners, shall be fined not less than twenty-five nor more than two hundred and fifty dollars, and in default of payment thereof shall be imprisoned in the common jail of said District not less than thirty days nor more than ninety days; said fines when collected to be paid into the Treasury of the United States to the credit of the District of Columbia. (May 4, 1896, 29 Stat. 113, ch. 154, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof" Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CHANGE OF NAME

"Municipal court" was substituted for "police court" to conform to act Apr. 1, 1942, which consolidated the police court and the municipal court.

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded Act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 31–904. Injunction proceedings—Duty of Commissioners—Jurisdiction of court.

In any case when such action shall be necessary in the opinion of the said Commissioners to give full effect to the intent of this subchapter they shall have power, and it shall be their duty, to file in the Superior Court of the District of Columbia, in the name of the said District, a petition against the proper parties praying an injunction against the opening or continuance of any such college not registered and granted a permit as aforesaid; and jurisdiction is hereby conferred upon such court to hear and determine such causes. (May 4, 1896, 29 Stat. 113, ch. 154, § 5; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(35), 84 Stat. 572.)

CODIFICATION

The word "petition" has been substituted for "bill", and the words "in equity" have been omitted as obsolete.

AMENDMENT

1970—Section 155(c)(35) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 31–905. Repeal provisions.

All acts and parts of acts enacted prior to May 4, 1896, and all charters obtained by any medical or dental college prior to Mar. 4, 1896, under the general incorporation laws in force in said District, so far as inconsistent with this subchapter, are hereby repealed. (May 4, 1896, 29 Stat. 113, ch. 154, § 6.)

SUBCHAPTER II.—FINANCIAL ASSISTANCE

§ 31–921. Purpose.

It is the purpose of this subchapter to assist private nonprofit medical and dental schools in the

District of Columbia in their critical financial needs in meeting the operational costs required to maintain quality medical and dental educational programs and to increase the number of students in such institutions as a necessary health manpower service to the metropolitan area of the District of Columbia. (Jan. 5, 1971, Pub. L. 91–650, title III, § 302, 84 Stat. 1934.)

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

SHORT TITLE

Section 301 of title III of act Jan. 5, 1971, Pub. L. 91–650, provided: "This title (enacting §§ 31–921 to 31–929) may be cited as the 'District of Columbia Medical and Dental Manpower Act of 1970'."

§ 31–922. Authorization of grants to Commissioner—Limitations—Appropriations authorized.

(a) The Secretary of Health, Education, and Welfare (hereinafter in this subchapter referred to as the "Secretary") is authorized to make grants to the Commissioner of the District of Columbia (hereinafter in this subchapter referred to as the "Commissioner") in amounts the Secretary determines to be the minimum amounts necessary to carry out the purposes of this subchapter. The total amount of grants under this section for any fiscal year shall not exceed the sum of (1) the product of $5,000 times the number of full-time students enrolled in private nonprofit accredited medical schools in the District of Columbia, and (2) the product of $3,000 times the number of full-time students enrolled in private nonprofit accredited dental schools in the District of Columbia.

(b) For the purposes of this section and section 31–926, in determining eligibility for, and the amount of, grants with respect to private nonprofit medical and dental schools, consideration shall be given to any grants made to such schools pursuant to the portion of the program under section 772 of the Public Health Service Act (42 U.S.C. 295f–2) relating to financial assistance to schools which are in serious financial straits to aid them in meeting their costs of operation.

(c) There are authorized to be appropriated $6,200,000 for the fiscal year ending June 30, 1971, and such sums as may be necessary for the fiscal year ending June 30, 1972, to make grants under this section. (Jan. 5, 1971, Pub. L. 91–650, title III, § 303, 84 Stat. 1934.)

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–923, 31–924, 31–925, 31–926.

§ 31–923. Application for grants—Time for filing—Contents.

The Secretary may from time to time set dates by which applications for grants under section 31–922 for any fiscal year must be filed by the Commissioner. A grant under section 31–922 may be made only if application therefor—

(1) is approved by the Secretary;

(2) contains such information as the Secretary may require to make the determinations required of him under this subchapter and such assurances as he may find necessary to carry out the purposes of this subchapter; and

(3) provides for such fiscal control and accounting procedures and reports and access to the records of the Commissioner and the applicant schools as the Secretary may from time to time require in carrying out his functions under this subchapter. (Jan. 5, 1971, Pub. L. 91–650, title III, § 304, 84 Stat. 1934.)

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

§ 31–924. Regulations to prescribe basis for determining number of students.

For the purposes of section 31–922 and section 31–926, regulations of the Secretary shall include provisions relating to the determination of the number of students enrolled in a school, or in a particular year-class in a school, as the case may be, on the basis of estimates, or on the basis of the number of students who were enrolled in a school, or in a particular year-class, as the case may be, in an earlier year, or on such basis as he deems appropriate for making such determinations. (Jan. 5, 1971, Pub. L. 91–650, title III, § 305, 84 Stat. 1934.)

§ 31–925. Method of paying grants under § 31–922.

Grants under section 31–922 may be paid in advance or by way of reimbursement at such intervals as the Secretary may find necessary and with appropriate adjustments on account of overpayments or underpayments previously made. (Jan. 5, 1971, Pub. L. 91–650, title III, § 306, 84 Stat. 1934.)

§ 31–926. Commissioner to make payments to medical and dental schools—Limitations.

From funds received under section 31–922, the Commissioner shall make payments (in amounts determined by the Secretary under such section 31–922) to private nonprofit schools of medicine and dentistry in the District of Columbia. The total of the payments under this section in any fiscal year to a medical school shall not exceed the product of $5,000 times the number of full-time students enrolled in such school, and the total of payments to a dental school shall not exceed the product of $3,000 times the number of full-time students enrolled in such school. (Jan. 5, 1971, Pub. L. 91–650, title III, § 307, 84 Stat. 1934.)

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–922, 31–924, 31–927, 31–928.

§ 31–927. Application for payments—Time for filing—Contents.

The Commissioner may from time to time set dates by which applications for payments by the Commissioner under section 31–926 for any fiscal year must be filed. A payment under section 31–926 by the Commissioner may be made only if the application therefor—

(1) is approved by the Commissioner upon his determination that the applicant meets the eligibility conditions of this subchapter; and

(2) contains such information as the Commissioner and the Secretary may require to make determinations required under this subchapter and such assurances as they may find necessary to carry out the purposes of this subchapter. (Jan. 5, 1971, Pub. L. 91–650, title III, § 308, 84 Stat. 1935.)

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

§ 31–928. Method of making payments under § 31–926.

Payments under section 31–926 by the Commissioner may be paid in advance or by way or reimbursement at such intervals as the Commissioner may find necessary and with appropriate adjustments on account of overpayments or underpayments previously made. (Jan. 5, 1971, Pub. L. 91–650, title III, § 309, 84 Stat. 1935.)

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

§ 31–929. Definitions.

For purposes of this subchapter:

(1) The term "full-time students" means students pursuing a full-time course of study in an accredited school of medicine or school of dentistry leading to a degree of doctor of medicine, doctor of dentistry, or an equivalent degree.

(2) The terms "school of medicine" and "school of dentistry" mean a school in the District of Columbia which provides training leading, respectively, to a degree of doctor of medicine and doctor of dentistry, or an equivalent degree, and which is accredited by a recognized body or bodies approved for such purpose by the Commissioner of Education of the United States.

(3) The term "nonprofit" as applied to a school of medicine or a school of dentistry means one which is owned and operated by one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual. (Jan. 5, 1971, Pub. L. 91–650, title III, § 310, 84 Stat. 1935.)

Chapter 10.—GALLAUDET COLLEGE

SUBCHAPTER I.—CONTINUATION AND ADMINISTRATION

Sec.
31–1008. Repealed.
31–1010. Repealed.
31–1010a. Repealed.
31–1011. Repealed.

SUBCHAPTER III.—DEMONSTRATION ELEMENTARY SCHOOL FOR THE DEAF

Sec.
31–1071. Gallaudet College to operate Kendall School as demonstration elementary school.
31–1072. Definitions.
31–1073. Authorization of appropriations.
31–1074. Design and construction of facilities.

SUBCHAPTER I.—CONTINUATION AND ADMINISTRATION

§ 31–1008. Repealed. Dec. 24, 1970, Pub. L. 91–587, § 5(b), 84 Stat. 1579.

Section, based on the proviso and the last sentence in the paragraph having a side heading "Columbia Institution for the Deaf and Dumb" in the first section of the Act of Mar. 1, 1901, ch. 670, 31 Stat. 844, related to the admission of deaf mutes from the District of Columbia and provided that the institution now known as Gallaudet College is not an institution of charity. See § 31–1071.

§ 31–1010. Repealed. Dec. 24, 1970, Pub. L. 91–587, § 5(a), 84 Stat. 1579.

Section, based on second proviso of the first paragraph under the heading "Columbia Institution for the Deaf and Dumb" of the first section of the Act of Mar. 2, 1889, ch. 411, 25 Stat. 962, related to expenses of instruction of deaf and dumb students. See § 31–1073.

§ 31–1010a. Repealed. Dec. 24, 1970, Pub. L. 91–587, § 5(e), 84 Stat. 1579.

Section, based on the proviso under the heading "Gallaudet College, Salaries and Expenses" in title II of Act Nov. 7, 1966, Pub. L. 89–787, 80 Stat. 1399, and similar provisions in the Acts set forth below, related to advance quarterly payments to Gallaudet College for certain students and the minimum rate per school year.

SIMILAR PROVISIONS

Provisions similar to those in the Act of Nov. 7, 1968, are contained in the following Department of Health, Education, and Welfare Appropriation Acts:

1971—Jan. 11, 1971, Pub. L. 91–667, title II, 84 Stat. 2014.
1970—Mar. 5, 1970, Pub. L. 91–204, title II, 84 Stat. 41.
1969—Oct. 11, 1968, Pub. L. 90–557, Title II, 82 Stat. 989.
1968—Nov. 8, 1967, Pub. L. 90–132, Title II, 81 Stat. 405.

§ 31–1011. Repealed. Dec. 24, 1970, Pub. L. 91–587, § 5(c)(d), 84 Stat. 1579.

Section, based on the last sentence under the heading "Columbia Institution for the Deaf and Dumb" in the first section of the Act of Mar. 3, 1905, ch. 1406, 33 Stat. 901, and the last sentence of the first paragraph under the heading "Columbia Institution for the Deaf and Dumb" in the first section of the Act of June 27, 1906, ch. 3553, 34 Stat. 503, related to the education of colored deaf-mute children of the District of Columbia. See § 31–1071.

§ 31–1025. Gallaudet College—Successor to Columbia Institution for the Deaf.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1033.

§§ 31–1026 to 1028.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 31–1025, 31–1033.

§ 31–1029. Board of Directors—Appointment and composition—Terms—Power to remove members.

Gallaudet College shall be under the direction and control of a Board of Directors, composed of twenty-one members selected as follows: (1) Three public members of whom: one shall be a United States Senator appointed by the President of the Senate; two shall be Representatives appointed by the

Speaker of the House of Representatives; (2) eighteen other members, all of whom shall be elected by the Board of Directors, who on June 18, 1954 shall include those persons serving as nonpublic members of the Board of Directors of the Columbia Institution for the Deaf immediately prior to such date, and of whom one shall be elected pursuant to regulations of the Board of Directors on nomination by the Gallaudet College Alumni Association for a term of three years. The members appointed from the Senate and House of Representatives shall be appointed for a term of two years at the beginning of each Congress, shall be eligible for reappointment, and shall serve until their successors are appointed. The Board of Directors shall have the power to fill any vacancy in the membership of the Board except for public members. Nine directors shall be a quorum to transact business. The said Board of Directors, by vote of a majority of its membership, shall have power to remove any member of their body (except the public members) who may refuse or neglect to discharge the duties of a director, or whose removal would, in the judgment of said majority, be to the interest and welfare of said corporation. (June 18, 1954, 68 Stat. 265, ch. 324, § 5; July 23, 1968, Pub. L. 90–415, §§ 1, 2, 82 Stat. 397.)

AMENDMENTS

1968—Sections 1 and 2 of act July 23, 1968, Pub. L. 90–415, amended section by increasing the number of directors to "twenty-one"; by increasing the number of the members to be elected as provided in clause (2) from "ten" to "eighteen"; and by increasing the number required to constitute a quorum from "Seven" to "Nine" effective with the election of the eight additional members.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–1025, 31–1033.

§ 31–1030. Powers of the Board of Directors.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–1025, 31–1033.

§ 31–1031. Financial transactions and accounts—Annual report to the Secretary of Health, Education, and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–1025, 31–1030, 31–1033.

§ 31–1032. Appropriations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–1025, 31–1033.

SUBCHAPTER II.—MODEL SECONDARY SCHOOL FOR THE DEAF

§ 31–1053. Agreement with Gallaudet College to establish model secondary school—Terms—Annual reports to Congress.

CODIFICATION

The provisions of section 133z–15 of title 5 U.S. Code, referred to in this section, have been incorporated in revised title 5 section 913 of the U.S. Code.

SUBCHAPTER III.—DEMONSTRATION ELEMENTARY SCHOOL FOR THE DEAF

§ 31–1071. Gallaudet College to operate Kendall School as demonstration elementary school.

For the purpose of providing day and residential facilities for elementary education for persons who are deaf in order to prepare them for high school and other secondary study, and to provide an exemplary educational program to stimulate the development of similar excellent programs throughout the Nation, the directors of Gallaudet College are authorized to maintain and operate Kendall School as a demonstration elementary school for the deaf, to serve primarily residents of the National Capital region. (Dec. 24, 1970, Pub. L. 91–587, § 1, 84 Stat. 1579.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1073.

§ 31–1072. Definitions.

As used in this subchapter—

(a) The term "elementary school" means a school which provides education for deaf children from the age of onset of deafness to age fifteen, inclusive, but not beyond the eighth grade or its equivalent.

(b) The term "construction" includes construction and initial equipment of new buildings, and expansion, remodeling, and alteration of existig buildings and equipment thereof, including architect's services, but excluding off-site improvements. (Dec. 24, 1970, Pub. L. 91–587, § 2, 84 Stat. 1579.)

§ 31–1073. Authorization of appropriations.

(a) There are authorized to be appropriated for each fiscal year such sums as may be necessary for the establishment and operation, including construction and equipment, of the demonstration elementary school provided for in section 31–1071.

(b) Federal funds appropirated for the benefit of the school shall be used only for the purposes for which paid and in accordance with the applicable provisions of this subchapter. (Dec. 24, 1970, Pub. L. 91–587, § 3, 84 Stat. 1579.)

§ 31–1074. Design and construction of facilities.

In the design and construction of any facilities, maximum attention shall be given to excellence of architecture and design, works of art, and innovative auditory and visual devices and installations appropriate for educational functions of such facilities. (Dec. 24, 1970, Pub. L. 91–587, § 4, 84 Stat. 1579.)

Chapter 11.—MISCELLANEOUS

Sec.

31–1118. Use of appropriated funds for transportation of students to change racial balance in schools—Education of individuals in elementary or secondary schools outside the District—Exceptions.

§ 31–1108. Title and jurisdiction over Reservation 277–F transferred for school purposes—Authority to close streets and alleys.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(242) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 31–1111. Placement of children in schools.

NOTES TO DECISIONS

Racial and economic discrimination

In this action alleging racial and economic discrimination and other wrong doings in the operation of the

public school system, the court ordered: 1. An injunction against racial and economic discrimination. 2. Abolition of the track system. 3. Abolition of the optional zones. 4. Transportation of voluntary children in overcrowded schools to underpopulated schools. 5. The defendants to file for court approval of a plan for pupil assignment eliminating racial and economic discrimination in the public school system. 6. Substantial integration of the faculty of each school beginning with the new school year. 7. The defendants to file for court approval, a teacher assignment plan fully integrating the faculty of each school. *J. W. Hobson etc.* v. *C. F. Hansen etc.* (1967, 269 F. Supp. 401; remanded 132 U.S. App. D.C. 372, 408 F. 2d 175).

§ 31–1118. Use of appropriated funds for transportation of students, to change racial balance in schools—Education of individuals in elementary or secondary schools outside the District—Exceptions.

No funds appropriated for the government of the District of Columbia may be used—

(1) to provide transportation for students enrolled in the public schools of the District of Columbia if the transportation is provided solely to change the racial balance in any public school in the District of Columbia, or

(2) for the cost of education (including the cost of transportation) of any individual in an elementary or secondary school located outside the District of Columbia, except (A) any handicapped individual for whom education facilities do not exist in the public school system of the District of Columbia and (B) any individual under the care, custody, or guardianship of the District of Columbia placed in a foster home or in an institution located outside the District of Columbia.

(Aug. 2, 1968, Pub. L. 90–450, title IV, § 401, 82 Stat. 615.)

SHORT TITLE

The enacting clause of act, Aug. 2, 1968, Pub. L. 90–450, provided: That this Act [Amending sections 25–107, 25–115(a), 47–1567b(a), 47–1571a, 47–1574b, 47–1586f(a)(4), 47–1589(b), 47–2501a, 47–2601, 47–2602, 47–2605, 47–2701, and 47–2702 and enacting sections 31–1118 and 47–145] may be cited as the "District of Columbia Revenue Act of 1968".

Chapter 13.—EDUCATIONAL AGENCY FOR SURPLUS PROPERTY

§ 31–1301. Educational Agency for Surplus Property established—Functions and duties.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 31–1302. Working capital fund provided—Rules and regulations of Agency.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(243) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 31–1303. Termination of Agency.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 14.—PUBLIC SCHOOL FOOD SERVICES

Sec.
31–1405. Appropriations authorized for payment of compensation and acquisition, maintenance, and replacement of equipment.

§ 31–1401. Department of food services—Establishment—Direction and control by Board of Education—Program.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1407.

§ 31–1402. Powers of the Board.

* * * * *

(d) upon the written recommendation of the Superintendent of Schools, to employ on a full-time or part-time basis such personnel as may be required for the operation and maintenance of food services. The Commissioner of the District of Columbia shall fix and adjust, from time to time, the rates of pay of such personnel in accordance with the rates of pay of personnel in positions of similar levels of duties, responsibilities, and qualification requirements, as determined by the Commissioner, and with respect to part-time employees without regard to prohibitions or limitations relating to dual compensation as contained in any Act of Congress. Persons employed under the provisions of this paragraph shall be entitled to compensation for all time when and as they perform service, and, in addition thereto, shall be entitled to compensation for such holidays as fall within a regular tour of duty of not less than five days in any established workweek. Persons employed under this paragraph shall not be entitled, by reason of such service, to vacation or annual leave with pay. Notwithstanding the provisions of any other law, such persons shall be entitled to sick leave with pay, to be cumulative at the rate of one day a month, September to June, inclusive, of each year, the total cumulation not to exceed thirty days, to be granted under such conditions as the Board may by regulation prescribe: *Provided,* That as to part-time employees such leave shall be prorated on an hourly basis. The days of sick leave with pay provided for in this section shall mean days on which employees would otherwise work and receive pay and shall be exclusive of Saturdays, Sundays, holidays, and vacation periods authorized by the Board;

* * * * *

(As amended Oct. 25, 1968, Pub. L. 90–640, § 1, 82 Stat. 1363.)

REFERENCES IN TEXT

The reference in subsection (e) is obviously an error. The "fund" referred to in the subsection was created by section 5 of the act of Oct. 8, 1951, 65 Stat. 369, and is classified to section 31–1404.

AMENDMENT

1968—Section 1, act Oct. 25, 1968, Pub. L. 90–640, amended subsection (d) by striking out "at rates of pay to be fixed by said Board without reference to the Classification Act of 1949," and inserting in lieu thereof a period and the new sentence authorizing the Commissioner to fix and adjust from time to time the rates of pay of personnel as therein provided. The Classification Act of 1949 was repealed by act Sept. 6, 1966, Pub. L. 89–544 which reenacted its provisions as a part of title 5 U.S. Code.

EFFECTIVE DATE OF 1968 AMENDMENTS AND ENACTMENTS

Section 6(a), act Oct. 25, 1968, Pub. L. 90–640, provided: "The preceding sections of this Act [Amendments of sections 31–1402, 31–1404, 31–1405 and section 4 of the Act set out as a note to 31–1405 and section 5 of the Act set out as a note to 31–1402] shall become effective as of July 1, 1968."

RETROACTIVE PAY, GROUP INSURANCE AND REEMPLOYMENT PROVISIONS

Section 5, act Oct. 25, 1968, Pub. L. 90–640, provided: "Retroactive pay is authorized for the period beginning on February 11, 1968, and ending on the date on which adjustments in rates of pay are officially ordered by the Commissioner of the District of Columbia as a result of the enactment of this [Amendments of sections 31–1402, 31–1404 and 31–1405 and notes to sections 31–1402 and 31–1405]; but such retroactive pay shall be paid only—

(1) in the case of an individual in the service of the Board of Education of the District of Columbia (including service in the Armed Forces of the United States) on the date on which such adjustments in rates of pay are so ordered;

(2) to a former employee within the classes of employees whose pay is adjusted, by official order of the Commissioner of the District of Columbia as a result of the enactment of this [Amendments of sections 31–1402, 31–1404 and 31–1405 and notes to sections 31–1402 and 31–1405], who retired during the period beginning on February 11, 1968, and ending on the date on which such adjustments in rates of pay are so ordered, for services rendered during such period; and

(3) in accordance with subchapter VIII of chapter 55 of title 5, United States Code, relating to settlement of accounts of deceased employees, for services rendered, during the period beginning on February 11, 1968, and ending on the date on which such adjustments in rates of pay are so ordered, by a former employee within the classes of employees whose pay is adjusted by official order of the Commissioner of the District of Columbia as a result of the enactment of this [Amendments of sections 31–1402, 31–1404, 31–1405 and notes to sections 31–1402 and 31–1405], who died during such period.

(b) For the purposes of this section, service in the Armed Forces of the United States, in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the government of the District of Columbia."

Section 6(b), act Oct. 25, 1968, Pub. L. 90–640, provided: "(b) For the purposes of determining the amount of insurance for which an individual is eligible under chapter 87 of title 5, United States Code, relating to group life insurance for Government employees, all adjustments in rates of pay, which are officially ordered by the Commissioner of the District of Columbia as a result of the enactment of this [Amendments of sections 31–1402, 31–1404, 31–1405 and notes to sections 31–1402 and 31–1405] and which become effective in any period prior to the date on which such adjustments in rates of pay are so ordered, shall be held and considered to become effective on the date on which such adjustments are so ordered."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1407.

§ 31–1403. Service credit for retirement—Deposits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1407.

§ 31–1404. Food services fund—Appropriation authorized—Revenues and receipts—To be permanent revolving fund—Expenditures.

* * * * *

The Food Services Fund shall be available for the payment of all expenses, other than personal services, necessary for the operation of the Department of Food Services, to the extent that appropriations, other than appropriations for personal services, are not available or are insufficient to pay such expenses in the fiscal year concerned. (As amended Oct. 25, 1968, Pub. L. 90–640, § 2, 82 Stat. 1363.)

REFERENCE IN TEXT

This section is erroneously referred to in section 31–1402 of this title as section 31–659. See Reference in Text note under section 31–1402.

AMENDMENT

1968—Section 2, act Oct. 25, 1968, Pub. L. 90–640, amended the last sentence to read as above set out. Prior to this amendment the sentence read as follows: "The Food Services Fund shall be available for the purchase of foods, supplies, and all other services and expenditures of whatever nature which are necessary for the conduct of the Department of Food Services, including personal services, the operation and maintenance of motor trucks, and the expenses of conducting the Office of Central Management."

EFFECTIVE DATE OF 1968 AMENDMENTS AND ENACTMENTS

Section 6(a), act Oct. 25, 1968, Pub. L. 90–640 provided: "The preceding sections of this Act [Amendments of sections 31–1402, 31–1404, 31–1405 and section 4 of the Act set out as a note to 31–1405 and section 5 of the Act set out as a note to 31–1402] shall become effective as of July 1, 1968."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1407.

§ 31–1405. Appropriations authorized for payment of compensation and acquisition, maintenance and replacement of equipment.

Appropriations are authorized for the payment of compensation for all personal services necessary for the operation of the Department of Food Services and for the acquisition, maintenance, and replacement of equipment for use in that operation. (Oct. 8, 1951, 65 Stat. 369, ch. 448, title I, § 6; Sept. 2, 1958, 72 Stat. 1735, Pub. L. 85–901, § 1; Oct. 25, 1968, Pub. L. 90–640, § 3, 82 Stat. 1363.)

AMENDMENT

1968—Section 3, act Oct. 25, 1968, Pub. L. 90–640, amended section to read as above set out. The prior provision did not authorize appropriations for payment of compensation; contained provisions for reimbursement of the School Food Services Fund for lunches in certain cases. The section prior to this amendment is set out in the main edition.

EFFECTIVE DATE OF 1968 AMENDMENTS AND ENACTMENTS

Section 6(a), act Oct. 25, 1968, Pub. L. 90–640, provided: "The preceding sections of this Act [Amendments of sections 31–1402, 31–1404, 31–1405 and section 4 of the Act set out as a note to 31–1405 and section 5 of the Act set out as a note to 31–1402] shall become effective as of July 1, 1968."

USE OF UNOBLIGATED FUNDS

Section 4, act Oct. 25, 1968, Pub. L. 90–640, provided: "Unobligated funds, not to exceed $148,000, appropriated to the general fund of the government of the District of Columbia for the fiscal year ending June 30, 1968, may be used to increase the compensation of employees in the Department of Food Services in the public schools of the District of Columbia, for the period beginning February 11, 1968, and ending June 30, 1968."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1407.

§ 31–1406. Payment and deposit of cafeteria and lunchroom funds—Transfer of supplies and equipment—Time limitation—Payment of obligations after transfer.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1407.

§ 31–1408. Audits of accounts—Reports to Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1407.

§ 31–1409. Distribution of commodities.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1410.

Chapter 15.—SALARIES OF TEACHERS, SCHOOL OFFICERS AND OTHER EMPLOYEES

CHAPTER REFERRED TO IN U.S. CODE

This chapter is referred to in title 5 sections 5102, 5541 of the U.S. Code.

SUBCHAPTER IV.—METHOD OF ADVANCEMENT AND PROMOTION OF EMPLOYEES

Sec.

* * * * *

31–1535. Effective date of promotions to groups A–1, B, C, and D—Assignment to numerical service steps.

* * * * *

SUBCHAPTER V.—ACCOMPANYING LEGISLATION

* * * * *

31–1543. Classification of certain employees as teachers; salary payable in semimonthly installments.

* * * * *

SUBCHAPTER I.—SALARY SCHEDULES

§ 31–1501. Salaries of teachers, school officers and other employees—Service steps.

The following are the salary schedules for teachers, school officers, and certain other employees of the Board of Education whose positions are included therein:

Salary class and group	Service step								
	1	2	3	4	5	6	7	8	9
Class 1:									
Superintendent of schools	$38,500								
Class 2:									
Group A, Deputy superintendent	31,000								
Group B, Associate superintendent	29,000								
Class 3:									
Assistant superintendent	22,190	$22,720	$23,250	$23,780	$24,310	$24,840	$25,370	$25,900	$26,430
Class 4	19,480	19,940	20,400	20,860	21,320	21,780	22,240	22,700	23,160
Director, curriculum.									
Director, staff development.									
Executive assistant to superintendent.									
Class 5:									
Group A, bachelor's degree	17,600	18,040	18,480	18,920	19,360	19,800	20,240	20,680	21,120
Group B, master's degree	18,380	18,820	19,260	19,700	20,140	20,580	21,020	21,460	21,900
Group C, master's degree plus 30 credit hours	18,770	19,210	19,650	20,090	20,530	20,970	21,410	21,850	22,290
Group D, doctor's degree	19,160	19,600	20,040	20,480	20,920	21,360	21,800	22,240	22,680
Chief examiner.									
Executive assistants to associate superintendents.									
Director of food services.									
Director, industrial and adult education.									
Executive assistant to deputy superintendent.									
Class 6:									
Group B, master's degree	17,860	18,285	18,710	19,135	19,560	19,985	20,410	20,835	21,260
Level IV, principal	17,860	18,285	18,710	19,135	19,560	19,985	20,410	20,835	21,260
Level III, principal	17,345	17,770	18,195	18,620	19,045	19,470	19,895	20,320	20,745
Level II, principal	16,830	17,255	17,680	18,105	18,530	18,955	19,380	19,805	20,230
Level I, principal	16,315	16,740	17,165	17,590	18,015	18,440	18,865	19,290	19,715
Group C, master's degree plus 30 credit hours	18,250	18,675	19,100	19,525	19,950	20,375	20,800	21,225	21,650
Level IV, principal	18,250	18,675	19,100	19,525	19,950	20,375	20,800	21,225	21,650
Level III, principal	17,735	18,160	18,585	19,010	19,435	19,860	20,285	20,710	21,135
Level II, principal	17,220	17,645	18,070	18,495	18,920	19,345	19,770	20,195	20,620
Level I, principal	16,705	17,130	17,555	17,980	18,405	18,830	19,255	19,680	20,105
Group D, doctor's degree	18,640	19,065	19,490	19,915	20,340	20,765	21,190	21,615	22,040
Level IV, principal	18,640	19,065	19,490	19,915	20,340	20,765	21,190	21,615	22,040
Level III, principal	18,125	18,550	18,975	19,400	19,825	20,250	20,675	21,100	21,525
Level II, principal	17,610	18,035	18,460	18,885	19,310	19,735	20,160	20,585	21,010
Level I, principal	17,095	17,520	17,945	18,370	18,795	19,220	19,645	20,070	20,495
Assistant to assistant superintendent (elementary schools).									
Assistant to assistant superintendent (junior and senior high schools).									
Assistant to assistant superintendent (general research, budget, and legislation).									
Assistant to assistant superintendent of pupil personnel services.									
Assistant to assistant superintendent (industrial and adult education, vocational education, evening and summer school).									
Director, elementary education (supervision and instruction).									
Director, health, physical education, athletics, and safety.									
Director, special education.									
Principal, senior high school.									
Principal, junior high school.									
Principal, elementary school.									
Principal, vocational high school.									
Principal, Americanization school.									
Principal, boys' junior-senior high school.									
Principal, Capitol Page School.									
Principal, health school.									
Principal, laboratory school.									
Principal, veterans' high school.									

Salary class and group	Service step								
	1	2	3	4	5	6	7	8	9
Class 7:									
Group B, master's degree	$16,205	$16,595	$16,985	$17,375	$17,765	$18,155	$18,545	$18,935	$19,325
Group C, master's degree plus 30 credit hours	16,595	16,985	17,375	17,765	18,155	18,545	18,935	19,325	19,715
Group D, doctor's degree	16,985	17,375	17,765	18,155	18,545	18,935	19,325	19,715	20,105
Supervising director, elementary education (supervision and instruction).									
Supervising director, audio-visual instruction.									
Supervising director, adult education and summer school.									
Supervising director, subject field.									
Supervising director, reading clinic.									
Supervising director, athletics.									
Director, school attendance.									
Supervising director, curriculum.									
Director, elementary education.									
Director, elementary education (administration).									
Class 8:									
Group B, master's degree	14,800	15,175	15,550	15,925	16,300	16,675	17,050	17,425	17,800
Group C, master's degree plus 30 credit hours	15,190	15,565	15,940	16,315	16,690	17,065	17,440	17,815	18,190
Group D, doctor's degree	15,580	15,955	16,330	16,705	17,080	17,455	17,830	18,205	18,580
Statistical analyst.									
Assistant principal, senior high school									
Assistant principal, junior high school.									
Assistant principal, elementary school.									
Assistant principal, vocational high school.									
Assistant principal, Americanization school.									
Assistant principal, health school.									
Class 9:									
Group A, bachelor's degree	13,880	14,240	14,600	14,960	15,320	15,680	16,040	16,400	16,760
Group B, master's degree	14,660	15,020	15,380	15,740	16,100	16,460	16,820	17,180	17,540
Group C, master's degree plus 30 credit hours	15,050	15,410	15,770	16,130	16,490	16,850	17,210	17,570	17,930
Group D, doctor's degree	15,440	15,800	16,160	16,520	16,880	17,240	17,600	17,960	18,320
Assistant director, food services.									
Class 10:									
Group B, master's degree	14,095	14,445	14,795	15,145	15,495	15,845	16,195	16,545	16,895
Group C, master's degree plus 30 credit hours	14,485	14,835	15,185	15,535	15,885	16,235	16,585	16,935	17,285
Group D, doctor's degree	14,875	15,225	15,575	15,925	16,275	16,625	16,975	17,325	17,675
Assistant director, audio visual instruction.									
Assistant director, subject field.									
Assistant director, adult education and summer school.									
Supervisor, elementary education.									
Class 11:									
Group B, master's degree	13,670	14,005	14,340	14,675	15,010	15,345	15,680	16,015	16,350
Group C, master's degree plus 30 credit hours	14,060	14,395	14,730	15,065	15,400	15,735	16,070	16,405	16,740
Group D, doctor's degree	14,450	14,785	15,120	15,455	15,790	16,125	16,460	16,795	17,130
Assistant director, practical nursing.									
Class 12:									
Group B, master's degree	13,200	13,525	13,850	14,175	14,500	14,825	15,150	15,475	15,800
Group C, master's degree plus 30 credit hours	13,590	13,915	14,240	14,565	14,890	15,215	15,540	15,865	16,190
Group D, doctor's degree	13,980	14,305	14,630	14,955	15,280	15,605	15,930	16,255	16,580
Chief attendance officer.									
Clinical psychologist.									
Class 13:									
Group B, master's degree	12,080	12,456	12,850	13,235	13,620	14,005	14,390	14,775	15,160
Group C, master's degree plus 30 credit hours	12,470	12,855	13,240	13,625	14,010	14,395	14,780	15,165	15,550
Group D, doctor's degree	12,860	13,245	13,630	14,015	14,400	14,785	15,170	15,555	15,940
Psychiatric social worker.									

Salary class and group	Service step						
	1	2	3	4	5	6	7
Class 14:							
Group A, bachelor's degree	$9,250	$9,660	$10,070	$10,480	$10,890	$11,300	$11,710
Group B, master's degree	10,030	10,440	10,850	11,260	11,670	12,080	12,490
Group C, master's degree plus 30 credit hours	10,420	10,830	11,240	11,650	12,060	12,470	12,880
Group D, doctor's degree	10,810	11,220	11,630	12,040	12,450	12,860	13,270
Coordinator of practical nursing.							
Census supervisor.							
Class 15:							
Group A, bachelor's degree	7,800	8,115	8,430	8,745	9,060	9,375	9,760
Group A–1, bachelor's degree plus 15 credit hours	8,190	8,505	8,820	9,135	9,450	9,765	10,150
Group B, master's degree	8,580	8,965	9,350	9,735	10,120	10,505	10,990
Group C, master's degree plus 30 credit hours	8,970	9,355	9,740	10,125	10,510	10,895	11,380
Group D, master's degree plus 60 credit hours or doctor's degree	9,360	9,745	10,130	10,515	10,900	11,285	11,770
Teacher, elementary and secondary schools.							
Attendance officer.							
Child labor inspectors.							
Counselor, placement.							
Counselor, elementary and secondary schools.							
Librarian, elementary and secondary schools.							
Research assistant.							
School social worker.							
Speech correctionist.							
School psychologist.							

Salary class and group	Service step						Longevity step Y
	8	9	10	11	12	13	
Class 14:							
Group A, bachelor's degree	$12,120	$12,530	$12,940	$13,350	$13,760	$14,170	----------
Group B, master's degree	12,900	13,310	13,720	14,130	14,540	14,950	----------
Group C, master's degree plus 30 credit hours	13,290	13,700	14,110	14,520	14,930	15,340	----------
Group D, doctor's degree	13,680	14,090	14,500	14,910	15,320	15,730	----------
Coordinator of practical nursing.							
Census supervisor.							
Class 15:							
Group A, bachelor's degree	10,145	10,530	10,915	11,300	11,685	12,070	$13,000
Group A–1, bachelor's degree plus 15 credit hours	10,535	10,920	11,305	11,690	12,075	12,460	13,800
Group B, master's degree	11,475	11,960	12,445	12,930	13,415	13,900	15,200
Group C, master's degree plus 30 credit hours	11,865	12,350	12,835	13,320	13,805	14,290	15,600
Group D, master's degree plus 60 credit hours or doctor's degree	12,255	12,740	13,225	13,710	14,195	14,680	16,100
Teacher, elementary and secondary schools.							
Attendance officer.							
Child labor inspectors.							
Counselor, placement.							
Counselor, elementary and secondary schools.							
Librarian, elementary and secondary schools.							
Research assistant.							
School social worker.							
Speech correctionist.							
School psychologist.							

(Aug. 5, 1955, 69 Stat. 521, ch. 569, title I, § 1; July 25, 1958, 72 Stat. 414, Pub. L. 85–552, § 1; Aug. 28, 1958, 72 Stat. 1004, Pub. L. 85–838, § 1; Sept. 13, 1960, 74 Stat. 913, Pub. L. 87–773, § 1; Oct. 24, 1962, 76 Stat. 1229, Pub. L. 87–881, title I, § 101(1); Aug. 14, 1964, 78 Stat. 431, Pub. L. 88–426, title III, § 306 (i)(5); Sept. 2, 1964, 78 Stat. 882, Pub. L. 88–575, title II, § 201(1); Nov. 13, 1966, 80 Stat. 1594, Pub. L. 89–810, title II, § 202(1); May 27, 1968, Pub. L. 90–319, § 2(1), 82 Stat. 132, eff. Oct. 1, 1967; May 27, 1968, Pub. L. 90–319, § 2(2), 82 Stat. 135, eff. July 1, 1968; June 30, 1970, Pub. L. 91–297, title III, § 302(1), 84 Stat. 358.)

CODIFICATION

Act July 18, 1966, Pub. L. 89–504, was the Federal Employees Salary Act of 1966. Section 108 (b), (c) and (d) of that act related to increase in compensation by administrative action. Pub. L. 90–83, which incorporates certain provisions of the above act into the new title 5, U.S.C., repeals the provisions of section 108 (b), (c) and (d), as executed, without prejudice to existing rights.

AMENDMENTS

1970—Section 302(1), act June 30, 1970, Pub. L. 91–297, amended the salary schedules generally as above set out.

1968—Section 2(1), act May 27, 1968, Pub. L. 90–319, amended the salary schedules generally, effective Oct. 1, 1967. Section 2(2) of the same act also amended the salary schedules generally effective July 1, 1968.

APPLICABILITY OF 1970 SALARY INCREASE FOR SUPERINTENDENT OF SCHOOLS

Section 303 of title III of act June 30, 1970, Pub. L. 91–297, provided:

"The increase provided in this title for the position of Superintendent of Schools under salary class 1 of the salary schedule shall be effective only with respect to individuals employed in that position on or after the date of the enactment of this title."

EFFECTIVE DATE OF 1970 AMENDMENTS

Section 306 of title III of act June 30, 1970, Pub. L. 91–297, provided:

"The provisions of this title [amending §§ 31–609, 31–630, 31–1501, 31–1511(c)(2), 31–1512, 31–1521, 31–1522, 31–1531(a)(1), (b), 31–1535 (a), (b), 31–1542 (a), (d)(1), (d)(2), and 31–1543, and enacting sections 301 and 305 set out as notes to § 31–1501] shall take effect on the first day of the first pay period which begins on or after September 1, 1969."

RETROACTIVE COMPENSATION AND GROUP INSURANCE PROVISIONS OF ACT, APR. 15, 1970, PUBLIC LAW 91–231

For provisions of sections 5 and 9(c) of the above described act, see notes to section 4–823.

RETROACTIVE COMPENSATION AND GROUP INSURANCE PROVISIONS OF ACT JUNE 30, 1970, PUB L. 91–297

Section 111 of title I and section 305 of title III of the act of June 30, 1970, provided:

SEC. 111. For the purpose of determining the amount of insurance for which an individual is eligible under the provisions of chapter 87 of title 5, United States Code (relating to Government employees group life insurance), all changes in rates of compensation or salary which result from the enactment of this Act shall be held and considered to be effective as of the date of enactment of this title.

SEC. 305. (a) Retroactive compensation or salary shall be paid by reason of this title only in the case of an individual in the service of the Board of Education of the District of Columbia (including service in the Armed Forces of the United States) on the date of enactment of this title, except that such retroactive compensation or salary shall be paid (1) to any employee covered in this title who, as of June 29, 1970, is in the service of the Board of Education, (2) to any employee covered in this title who retired during the period beginning on the first day of the first pay period which began on or after September 1, 1969, and ending on the date of enactment of this title, for services rendered during such period, and (3) in accordance with the provisions of subchapter VIII of chapter 55 of title 5, United States Code (relating to settlement of accounts of deceased employees), for services rendered during the period beginning on the first day of the first pay period which began on or after September 1, 1969, and ending on the date of enactment of this Act, by any such employee who dies during such period.

(b) For purposes of this section, service in the Armed Forces of the United States in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the municipal government of the District of Columbia.

RETROACTIVE COMPENSATION AND GROUP INSURANCE PROVISIONS OF ACT MAY 27, 1968, PUB. L. 90–319

Sections 3 and 4 of the act of May 27, 1968, provided:

SEC. 3. (a) Retroactive compensation or salary shall be paid by reason of this Act only in the case of an individual in the service of the Board of Education of the District of Columbia (including service in the Armed Forces of the United States) on the date of enactment of this Act, except that such retroactive compensation or

salary shall be paid (1) to any employee covered in this Act who retired during the period beginning on October 1, 1967, and ending on the date of enactment of this Act, for services rendered during such period, and (2) in accordance with the provisions of subchapter VIII of chapter 55 of title 5, United States Code (relating to settlement of accounts of deceased employees), for services rendered during the period beginning on October 1, 1967, and ending on the date of enactment of this Act, by any such employee who dies during such period.

(b) For purposes of this section, service in the Armed Forces of the United States in the case of an individual relieved from training and service in the Armed Forces of the United States or discharged from hospitalization following such training and service, shall include the period provided by law for the mandatory restoration of such individual to a position in or under the municipal government of the District of Columbia.

SEC. 4. For the purpose of determining the amount of insurance for which an individual is eligible under the provisions of chapter 87 of title 5, United States Code (relating to Government employees group life insurance), all changes in rates of compensation or salary which result from the enactment of this Act shall be held and considered to be effective as of the date of the enactment of this Act.

SHORT TITLE

Section 301 of title III of act June 30, 1970, Pub. L. 91–297, provided:

"This title [amending §§ 31–609, 31–630, 31–1501, 31–1511(c)(2), 31–1512, 31–1521, 31–1522, 31–1531(a)(1), (b), 31–1535(a), (b), 31–1542(a), (d)(1), (d)(2), and 31–1543, and enacting sections 305 and 306 set out as notes to § 31–1501] may be cited as the 'District of Columbia Teachers' Salary Act Amendments of 1970'."

Section 1 of act May 27, 1968, Pub. L. 90–319, provided:

"This Act [Amending §§ 31–691, 31–1501, 31–1522(c), 31–1532(a)(1), 31–1533(a), 31–1535(a), 31–1542(a) and enacting sections 3 and 4 set out as a note to § 31–1501], may be cited as the 'District of Columbia Teachers' Salary Act Amendments of 1968'."

SALARY RATES FIXED BY ADMINISTRATIVE ACTION

For provisions of sections 3(d) and 4(b) of Act, Apr. 15, 1970, Pub. L. 91–231, 84 Stat. 197, see note to section 4–823.

For provisions of section 211 (b), (c), (d) of Act, Dec. 16, 1967, Pub. L. 90–206, see note to section 4–823.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–634, 31–635, 31–1511, 31–1512, 31–1521, 31–1522, 31–1531 to 31–1536, 31–1542, 31–1548.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 sections 8716, 8913 of the U.S. Code.

SUBCHAPTER II.—CLASSIFICATION AND ASSIGNMENT OF EMPLOYEES

§ 31–1511. Board of Education to establish eligibility requirements—Methods of appointment, promotion and salary classification—Definitions.

* * * * *

(c) When used in this chapter—

* * * * *

(2) The terms "plus fifteen credit hours" and "plus thirty credit hours" means the equivalent of not less than fifteen graduate semester hours beyond the bachelor's degree or thirty graduate semester hours beyond the master's degree as the case may be in academic, vocational, or professional courses, representing a definite educational program satisfactory to the Board, except that in the case of a shop teacher in the vocational education program the fifteen or thirty semester hours need not be graduate semester hours. Graduate credit hours beyond thirty which were earned prior to obtaining a master's degree may be applied in computing such thirty credit hours. The term "plus sixty credit hours" means the equivalent of not less than sixty graduate semester hours in academic, vocational, or professional courses beyond a master's degree, representing a definite eductional program satisfactory to the Board, except that in the case of a shop teacher in the vocational education program the sixty semester hours need not be graduate semester hours. Graduate credit hours beyond thirty which were earned prior to obtaining a master's degree may be applied in computing such sixty credit hours.

* * * * *

(As amended June 30, 1970, Pub. L. 91–297, title III, § 302(2), 84 Stat. 361.)

AMENDMENT

1970—Subsec. (c)(2). Section 302(2) of Pub. L. 91–297 amended the first sentence by inserting definition of "plus fifteen credit hours".

EFFECTIVE DATE OF 1970 AMENDMENT

See note to section 31–1501.

§ 31–1512. Probationary period.

(a) Except as provided in subsection (b), for other than temporary employees and the Superintendent of Schools, the first two years of service in each position or salary class covered by section 31–1501 shall be probationary regardless of any change in title or numbers used in classifying the position or salary class. Teachers, school officers, and other employees who have satisfactorily completed the probationary period in any position or salary class covered by section 31–1501 and whose permanent appointments have been approved by the Board shall be considered employees of the Board on permanent tenure.

(b) The Board of Education may place in a permanent status any fully qualified employee in salary class 15 having three or more years of satisfactory service, including service in an educational system or institution of recognized standing outside the District of Columbia, as determined by the Board, at any time beginning one year after the commencement of the probationary period of such employee. Any employee appointed to permanent status under this subsection shall be considered an employee of the Board on permanent tenure. (Aug. 5, 1955, 69 Stat. 524, ch. 569, title II, § 3; June 30, 1970, Pub. L. 91–297, title III, § 302(3), 84 Stat. 362.)

AMENDMENT

1970—Section 302(3) of Pub. L. 91–297, struck out the first word "For" and inserted "(a) Except as provided in subsection (b), for" in lieu thereof; inserted immediately after "position" each time it appeared "or salary class"; and inserted a new subsection (b) to read as above set out.

EFFECTIVE DATE OF 1970 AMENDMENT

See note to section 31–1501.

SUBCHAPTER III.—METHOD OF ASSIGNMENT OF EMPLOYEES TO SALARY SCHEDULES

§ 31–1521. Assignment of certain employees holding doctor's and master's degrees to salary classes.

Any employee of the Board of Education in group A of salary class 15 who possesses a bachelor's degree

plus fifteen credit hours shall be transferred in accordance with section 31–1535 (a) and (b) to group A–1 of salary class 15. (Aug. 5, 1955, 69 Stat. 524, ch. 569, title III, § 4; Aug. 28, 1958, 72 Stat. 1007, Pub. L. 85–838, § 1; Oct. 24, 1962, 76 Stat. 1232, Pub. L. 87–881, title I, § 101(4); Nov. 13, 1966, 80 Stat. 1598, Pub. L. 89–810, title II, § 202(3); June 30, 1970, Pub. L. 91–297, title III, § 302(4), 84 Stat. 362.)

AMENDMENTS

1970—Section 302(4) of act June 30, 1970, amended section generally to read as above set out.

1966—Section 202(3) of act Nov. 13, 1966, amended the section by substituting provisions for assignment of certain employees holding doctor's and master's degrees to salary class for provisions relating to assignment, to salary classes, of "Each teacher, school officer, or other employee in the service of the Board on January 1, 1963, who occupies a position held by him on December 31, 1962, under the provisions of this chapter" and to assignment of "Any employee in group A, B or C of his salary class on December 31, 1962" to the same letter group of the salary class to which he was transferred on January 1, 1963; and (2) for provisions setting out comparative tables, the two columns of which were headed "Title and Class of Position on January 1, 1963".

1962—Section 101(4) of act Oct. 24, 1962, amended the section by changing "1958" to "1963", "1957" to "1962" in the first sentence; by changing "1957" to "1962," "1958" to "1963" in the second sentence and by eliminating the balance of the sentence beginning with the word "except"; and by eliminating the last sentence in the section. It also amended the section by substituting new comparative tables.

1958—Act Aug. 28, 1958, amended the section generally.

EFFECTIVE DATE OF 1970 AMENDMENT

See note to section 31–1501.

EFFECTIVE DATE OF 1966 AMENDMENT

Amendment of this section by act Nov. 13, 1966, as effective July 1, 1966, see § 205(a) of such act set out as a note under § 31–1501.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending section 31–1501, 31–1511, 31–1521, 31–1531, 31–1532, 31–1533, 31–1536, 31–1542, 31–1543, 31–1544 and 31–1545] and 102 [repealing section 31–1502] of this title shall take effect as of January 1, 1963."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by act Aug. 28, 1958, effective Jan. 1, 1958, see section 4(a) of act Aug. 28, 1958, set out as a note under section 31–1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–1511, 31–1531, 31–1533.

§ 31–1522. Types of positions to which chapter applies—Authority of Board to determine which positions meet established criteria and other matters—Teacher-aide positions—Initial assignment of school principal positions and periodic evaluation of duties and responsibilities.

* * * * *

(c) The Board of Education, with the concurrence of the Board of Commissioners of the District of Columbia, is authorized to establish a position which shall be designated "teacher-aide (noninstructional)". Such positions shall be classified, in accordance with sections 5102 and 5106 of title 5, United States Code, at a grade not higher than GS–4, and shall be compensated in accordance with the General Schedule in section 5333(a) [1] of title 5, United States Code. The Board of Education shall prescribe minimum qualifications for appointment to such position. A person appointed to such position shall be a noninstructional employee, and his primary duty shall be to assist the instructional staff in tasks related to instruction.

* * * * *

(f) Whenever a teacher or school officer is changed to a lower salary class or to a lower level in the same salary class as in the case of school principals in the public school system, the Superintendent of Schools is authorized to fix the rate of compensation at a rate provided for in the salary class or level to which the employee is changed which does not exceed his existing rate of compensation, except that if his existing rate falls between two service steps provided in such lower salary class or level, he shall receive the higher of such rates; if he is receiving a rate of basic compensation in excess of the maximum rate provided in such lower salary class or level in which he is to be placed, he will retain his existing rate of compensation and receive one-half of any future increases granted his new salary class or level until such time as his rate of basic compensation is no longer in excess of the maximum rate provided in such lower salary class or level. This subsection shall not apply if such reduction to a lower salary class or level is (1) for personal cause, (2) at the request of such teacher or school officer, (3) as a condition of a previous temporary promotion to a higher grade, or (4) because of a reduction in force brought about by lack of funds or curtailment of work.

(As amended May 27, 1968, Pub. L. 90–319, § 2(8), 82 Stat. 139; June 30, 1970, Pub. L. 91–297, title III, § 302(5), 84 Stat. 362.)

AMENDMENTS

1970—Subsec. (f). Added by section 302(5) of Pub. L. 91–297.

1968—Section 2(8), act May 27, 1968, Pub. L. 90–319, amended subsection (c) by striking out the third sentence and inserting in lieu thereof: "The Board of Education shall prescribe minimum qualifications for appointment to such positions", and by striking out the fifth sentence. For provisions of these struck sentences see main edition of the code.

EFFECTIVE DATE OF 1970 AMENDMENT

See note to section 31–1501.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(244) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners under subsection (b) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 or Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–1511, 31–1531.

SUBCHAPTER IV.—METHOD OF ADVANCEMENT AND PROMOTION OF EMPLOYEES

§ 31–1531. Method of assignment to service steps—Promotion of employees.

(a)(1) On July 1 of each year, following the effective date of the District of Columbia Teachers' Sal-

[1] So in original. The General Schedule is in 5 U.S.C. § 5332(a).

ary Act Amendments of 1970, each permanent employee in salary class 15 who is on service step 13 and has completed 15 years of creditable service shall be assigned to longevity step Y. Each permanent employee in salary class 15 who is in longevity step X, on such effective date, shall be assigned to longevity step Y. In determining years of creditable service in salary classes 3 through 15 for placement on service steps, credit shall be given for previous service in accordance with the provisions of this chapter governing the placement of employees who are newly appointed, reappointed, or reassigned or who are brought under this chapter in accordance with the provisions of this section.

(2) Any teacher who was promoted from the salary class originally designated Salary Class 18 under this chapter (redesignated as Salary Class 15 by amendments effective on January 1, 1963 [act Oct. 24, 1962, Pub. L. 87–881]), if such promotion occurred after June 30, 1958, and prior to January 1, 1963, and who on the effective date of this paragraph occupies the same position to which he was promoted during such period shall be assigned to the numerical service step in his class, or class and group to which he would have been assigned had he been promoted on or after January 1, 1963.

(b) As soon as such reevaluation is completed for all employees involved, each such employee shall be assigned to the numerical service step for his salary class, or class and group, under this chapter next above the step corresponding to the number of his years of creditable service rendered prior to July 1, 1958, as determined by such re-evaluation, but no employee shall receive a salary above the top step for his class. or class and group, or below the step already occupied by him. If such re-evaluation places the employee on a higher numerical service step than the one already occupied by him he shall receive the full annual salary at the higher step for the year beginning July 1, 1958. On July 1 of each year, following the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970, each permanent employee who has not reached the highest service step for his group, or, if his salary class has no group, the highest service step for such salary class, shall advance one such service step until he reaches the highest service step for such group or salary class. However, the Board of Education, on the written recommendation of the Superintendent of Schools, is authorized to deny any such salary advancement following any school year in which the employee fails to receive a performance rating of "satisfactory" from his superior officer.

(c) The Superintendent of Schools, salary class 1, shall be assigned as of the date of his appointment as Superintendent to the salary step provided for that position in section 31–1501.

(d) Any permanent employee serving in a position which is not covered by this chapter but which may later be established under section 31–1522 shall be given service credit for the purpose of salary placement under this chapter equivalent to the number of years of satisfactory service rendered within the school system in the position then occupied by the employee, and shall be assigned to the numerical service step on the schedule for his class, or class and group, under this chapter next above the numerical service step corresponding to his years of creditable service in such position. If the employee has already attained a service step in such position which is numerically as high or higher than the top service step provided for his salary class, or class and group, under this chapter, he shall be assigned to the highest service step provided for his class, or class and group, under this chapter. (Aug. 5, 1955, 69 Stat. 526, ch. 569, title IV, § 6; Aug. 28, 1958, 72 Stat. 1009, Pub. L. 85–838, § 1; Oct. 24, 1962, 76 Stat. 1233, Pub. L. 87–881, title I, § 101(5)(6); Sept. 2, 1964, 78 Stat. 885, Pub. L. 78–885, title II, § 201(2); June 30, 1970, Pub. L. 91–297, title III, § 302(6), (7), 84 Stat. 362, 363.)

REFERENCE IN TEXT

In subsecs. (a)(1) and (b), the words "the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970" mean the effective date of title III of Pub. L. 91–297 as prescribed by section 306 thereof, which section is set out as a note to section 31–1501.

CODIFICATION

This section is set out in this supplement in its entirety for the purpose of adding subsections (c) and (d) thereto. Subsections (c) and (d) were inadvertently omitted from the section in the 1967 edition of the code.

AMENDMENTS

1970—Subsec. (a)(1). Amended generally by section 302(6) of Pub. L. 91–297, as above set out.

Subsec. (b). Section 302(7) of Pub. L. 91–297 amended the third sentence to read as above set out.

1964—Section 201(2) of act Sept. 2, 1964, amended section by designating subparagraph (a) as (a)(1), and by adding (a)(2) thereto.

1962—Section 101(5) of act Oct. 29, 1962, amended subsection (a) generally. Subsection (b) was amended, by section 101(6) of the same act, by striking the period at the end thereof and inserting the matter following the word "group" beginning with word "except" to the end of the paragraph.

1958—Act Aug. 28, 1958, amended the section generally and designated the provisions as subsecs. (a)—(d).

EFFECTIVE DATE OF 1970 AMENDMENT

See note to section 31–1501.

EFFECTIVE DATE OF ACT, SEPT. 2, 1964, TITLE II

Section 205 of act, Sept. 2, 1964, provided: "The provisions of this title [amending sections 31–1501, 31–729, 31–1531, and 31–1542] shall take effect on the first day of the first pay period beginning on or after July 1, 1964."

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31–1501, 31–1511, 31–1521, 31–1531, 31–1532, 31–1533, 31–1536, 31–1542, 31–1543, 31–1544 and 31–1545] and 102 [repealing section 31–1502] of this title shall take effect as of January 1, 1963."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by act Aug. 28, 1958, effective Jan. 1, 1958, see section 4(a) of act Aug. 28, set out as a note under section 31–1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1533.

§ 31–1532. Assignment of new employees to service steps—Evaluation of past experience—Adjustment of salary steps of existing employees—Absence because of military or naval service.

(a)(1) Each employee who is newly appointed or reappointed to any position is salary class 3 to 15, inclusive, of the salary schedule in section 31–1501 shall be assigned to the service step numbered next above the number of years of service with which he is credited for the purpose of salary placement. The Board, on the written recommendation of the Superintendent of Schools, is authorized to evaluate the

previous experience of each such employee to determine the number of years with which he may be so credited. Employees newly appointed, reappointed, or reassigned to any position in salary class 15 shall receive one year of such placement credit for each year of satisfactory service, not exceeding nine years, in the District of Columbia in salary class 15, or in any type of position covered in salary class 15 regardless of school level, in an educational system or recognized standing outside the District of Columbia public schools, as determined by the Board. Employees newly appointed, reappointed, or reassigned to any position in salary classes 3 to 14, inclusive, except the positions of chief librarian and assistant professor, associate professor and professor, shall receive no placement credit for educational service or trade experience outside the District of Columbia public schools. Employees reappointed or reassigned to positions in salary classes 3 to 14, inclusive, shall receive one year of placement credit for each year of satisfactory service in the same salary class or in a position of equivalent or higher rank within the District of Columbia public schools, except that no such employee shall receive more than five years of placement credit for previous service rendered as a temporary employee within such system. Persons appointed to the position of shop teacher in the vocational education program shall receive one year of placement credit for each year of approved experience in the trades, as determined by the Board but not in excess of nine years for any combination of trade experience and educational service outside the school system. Employees newly appointed or reappointed to positions of assistant professor (salary class 13), chief librarian and associate professor (salary class 11), and professor (salary class 8) shall receive one year of placement credit for each year of satisfactory service, not in excess of five years, in a position of the same or higher rank in a college or university of recognized standing outside the District of Columbia public schools, as determined by the Board.

* * * * * *

(As amended May 27, 1968, Pub. L. 90–319, § 2(3), 82 Stat. 138.)

AMENDMENT

1968—Section 2(3), act May 27, 1968, Pub. L. 90–319, amended the third sentence of subsection (a)(1) by striking out "the same type of position" and inserting in lieu thereof "any type of position covered in salary class 15".

EFFECTIVE DATE OF 1968 AMENDMENT

Section 6 of act May 27, 1968, Pub. L. 90–319, provided: "The amendments made by paragraphs (3) [31–1532(a)(1)], (4) [31–1533(a)], and (5) [31–1535(a)] of section 2 of this Act shall take effect on the first day of the first month beginning after the date of enactment of this Act" [May 27, 1968].

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–1533, 31–1534.

§ 31–1533. Salary increases of probationary employees—Termination of employment.

(a) Each teacher, school officer, and other employee appointed or promoted on probationary tenure to a position or salary class covered by section 31–1501 shall receive his first increase in salary in that position or salary class on the beginning day of his second year of probationary service in the position or salary class; he shall receive his second increase in salary in that position or salary class on the date when his appointment or promotion to the position or salary class is made permanent; and he shall receive all subsequent increases in salary to which he is entitled in that position or salary class on July 1 of each year, beginning with the July 1 next after the date of his permanent appointment or promotion to the position or salary class in accordance with section 31–1531 and section 31–1532, except that beginning with any such step increase normally due subsequent to June 30, 1963, the Board of Education, on written recommendation of the Superintendent of Schools, is authorized to deny any such increase in salary for the year immediately following any year in which the employee fails to receive a performance rating of "satisfactory" from his superior officer.

* * * * *

(As amended, May 27, 1968, Pub. L. 90–319, § 2(4), 82 Stat. 138.)

AMENDMENT

1968—Section 2(4), act May 27, 1968, Pub. L. 90–319, amended subsection (a) by inserting "or salary class" immediately after "position" each time the word appears in the subsection.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 6 of act May 27, 1968, Pub. L. 90–319, provided: "The amendments made by paragraphs (3) [31–1532(a)(1)], (4) [31–1533(a)], and (5) [31–1535(a)] of section 2 of this Act shall take effect on the first day of the first month beginning after the date of enactment of this Act" [May 27, 1968].

§ 31–1535. Effective date of promotions to groups A–1, B, C, and D—Assignment to numerical service steps.

(a) On and after the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970, each promotion to group A–1, group B, group C, or group D within a salary class shall become effective—

(1) on the date of the regular Board meeting of the twelfth month prior to the date of approval of promotion by the Board, or

(2) on the effective date of the master's degree or doctor's degree or on the completion of thirty or sixty credit hours beyond the master's degree or on the completion of fifteen credit hours beyond the bachelor's degree, as the case may be,

whichever is later.

(b) Any employee in a position in a salary class in the salary schedules in section 31–1501 who is promoted to group A–1, group B, group C, or group D of such salary class shall be placed in the same numerical service step in his new group which he would have occupied in the group from which he was promoted. (Aug. 5, 1955, 69 Stat. 528, ch. 569, title IV, § 10, eff. July 1, 1955; Nov. 13, 1966, 80 Stat. 1601, Pub. L. 89–810, title II, § 202(7); May 27, 1968, Pub. L. 90–319, § 2(5), 82 Stat. 138; June 30, 1970, Pub. L. 91–297, title III, § 302(8), 84 Stat. 363.)

REFERENCE IN TEXT

In subsec. (a), the words "the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970" mean the effective date of title III of Pub. L. 91–297 as prescribed by section 306 thereof, which section is set out as a note to section 31–1501.

AMENDMENTS

1970—Section 302(8) of Pub. L. 91–297, amended section generally to substitute reference to the effective date of the District of Columbia Teachers' Salary Act Amendments of 1970" for the Salary Act Amendments of 1966; and to insert reference to "group A–1".

1966—Section 202(7) of Pub. L. 89–810 amended section generally to substitute reference to effective date of the District of Columbia Teachers' Salary Act Amendments of 1966, for "July 1, 1955"; and to insert references to group D and to the doctor's degree and to "sixty credit hours". See rate schedule in § 31–1501, also see § 31–1511(c)(1)(2).

1968—Section 2(5), act May 27, 1968, Pub. L. 90–319, amended subsection (a) to read as above set out. The amendment changed the reference to the D.C. Teacher's Salary Act Amendments of 1968, in lieu of 1966, and made the effective date of promotions as provided in clause (1) above set out.

EFFECTIVE DATE OF 1970 AMENDMENT

See note to section 31–1501.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 6 of act May 27, 1968, Pub. L. 90–319, provided: "The amendments made by paragraphs (3) [31–1532(a)(1)], (4) [31–1533(a)], and (5) [31–1535(a)] of section 2 of this Act shall take effect on the first day of the first month beginning after the date of enactment of this Act" [May 27, 1968].

§ 31–1536. Promotions—Assignment to numerical service step.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1522.

SUBCHAPTER V.—ACCOMPANYING LEGISLATION

§ 31–1542. Evening, summer, and Americanization schools—Salaries—Expense-duty pay.

(a) The Board is authorized to conduct as part of its public school system the following: summer school programs, extended school year programs, adult education programs, and Americanization schools. The pay for teachers, officers, and other education employees in the summer school programs, adult education school programs, and veterans' summer high school centers shall be as follows:

Classification	Per period		
	Step 1	Step 2	Step 3
Summer school (regular):			
Teacher, elementary and secondary schools; counselor, elementary and secondary schools; librarian, elementary and secondary schools; school social worker; speech correctionist; school psychologist	$6.86	$7.61	$8.42
Psychiatric social worker	8.02	8.92	9.86
Clinical psychologist	8.35	9.29	10.28
Assistant principal, elementary and secondary schools	9.69	10.77	11.92
Supervising director	10.02	11.15	12.33
Principal, elementary and secondary schools	10.69	11.89	13.15
Veterans' summer school centers:			
Teacher	6.86	7.61	8.42
Adult education schools:			
Teacher	7.54	8.38	9.27
Assistant principal	10.66	11.85	13.11
Principal	11.76	13.07	14.46

* * * * *

(d)(1) The Board is authorized to pay to any employee in salary class 15 who performs an extra duty activity, on a continuing basis, in addition to the standard work assignment; the additional annual compensation prescribed for such extra duty activity by the Board in accordance with this subsection. The Board may, with the approval of the Board of Commissioners of the District of Columbia and on the written recommendation of the Superintendent of Schools, prescribe the amount of additional compensation for such employee who performs an extra duty activity, except that the amount of additional compensation for each such activity may not in any school year exceed $1,000.

(2) The additional compensation authorized by this subsection shall be in addition to the compensation prescribed by the salary schedule in section 31–1501 for employees in salary class 15. Payment of such additional compensation shall be made following the performance of such extra duty activity in the same manner as regular pay. Such additional compensation shall not be subject to deduction or withholding for retirement or insurance, and such additional compensation shall not be considered as salary (A) for the purpose of computing annuities pursuant to sections 31–721 to 31–725 and 31–726, 31–739, and the provisions of section 3323 and subchapter III[1] of chapter 81 of title 5, United States Code, or (B) for the purpose of computing insurance coverage under the provisions of chapter 87 of title 5, United States Code. Such additional compensation may be paid for more than one activity assigned to such an employee so long as such activities are not performed concurrently.

* * * * *

(As amended May 27, 1968, Pub. L. 90–319, § 2(6), 82 Stat. 138; May 27, 1968, Pub. L. 90–319, § 2(7), 82 Stat. 139; June 30, 1970, Pub. L. 91–297, title III, § 302(9), (10), 84 Stat. 363, 364.)

AMENDMENTS

1970—Subsec. (a). Section 302(9) of Pub. L. 91–297 amended the subsection generally, including the salary schedule, to read as above set out.

Subsec. (d)(1). Amended by section 302(10)(A) of Pub. L. 91–297 which substituted "any employee" for "a classroom teacher", "work assignment" for "teaching load assigned for a regular day school teacher at his particular school level", and "such an employee" for "a teacher".

Subsec. (d)(1). Amended by section 302(10)(B) of Pub. L. 91–297 which substituted "employees" for "classroom teachers", struck out "monthly", inserted "in the same manner as regular pay" after "extra duty activity", and substituted "such an employee" for "a classroom teacher".

1968—Subsec. (a). Section 2(6) of Pub. L. 90–319 amended the subsection generally, including the salary schedule, effective Oct. 1, 1967. Section 2(7) also amended the subsection, including the salary schedule, effective July 1, 1968.

EFFECTIVE DATE OF 1970 AMENDMENT

See note to section 31–1501.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCES

For provisions relating to retroactive compensation and group insurance under Act June 30, 1970, Pub. L. 91–297, see note to section 31–1501.

For provisions relating to retroactive compensation and group insurance under Act May 27, 1968, Pub. L. 90–319, see note to section 31–1501.

[1] So in original. There is no subchapter III of chapter 81 of title 5, U.S.C. See subchapter III of chapter 83 of title 5, U.S.C.

§ 31–1543. Classification of certain employees as teachers; salary payable in semimonthly installments.

On July 1, 1970, each employee assigned to salary class 15 shall be classified as a teacher for payroll purposes and his annual salary shall be paid in twenty or twenty-four semimonthly installments, at the discretion of such employee (and under such rules and regulations as the Board of Education may prescribe), in accordance with existing law. All other employees covered by the provision of this chapter shall have their annual salaries paid in twenty-four semimonthly installments in accordance with existing law. Annual salaries for employees paid in twenty-four semimonthly installments means calendar year for purposes of this section. (Aug. 5, 1955, 69 Stat. 529, ch. 569, title V, § 14; Aug. 28, 1958, 72 Stat. 1011, Pub. L. 85–838, § 1; Oct. 24, 1962, 76 Stat. 1235, Pub. L. 87–881, title I, § 101(12); June 30, 1970, Pub. L. 91–297, title III, § 302(11), 84 Stat. 364.)

AMENDMENTS

1970—Section 302(11) of Pub. L. 91–297, amended section, which read as follows: "Each employee assigned to salary class 15 in the schedule provided in section 31–1501, each assistant professor in salary class 13, each associate professor and chief librarian in salary class 11 and each professor in salary class 8 shall be classified as a teacher for payroll purposes and his annual salary shall be paid in ten monthly installments in accordance with existing law" to read as above set out.

1962—Section 101(12) of act Oct. 24, 1962, amended section, which read as follows: "Each employee assigned to salary class 18 in the schedule provided in section 31–1501, each chief librarian and each assistant professor in salary class 16, each associate professor in class 13, and each professor in class 8 shall be classified as a teacher for payroll purposes and his annual salary shall be paid in ten monthly installments in accordance with existing law", to read as above set out.

1958—Act Aug. 28, 1958, substituted "Each employee assigned to salary class 18 in the schedule provided in section 31–1501, each chief librarian and each assistant professor in salary class 16, each associate professor in class 13," for "Each employee assigned to salary class 18 in the foregoing schedules, and to the position of attendance officer, salary class 19; each chief librarian and each assistant professor in class 14; each associate professor in class 11;".

EFFECTIVE DATE OF 1970 AMENDMENT

See note to section 31–1501.

EFFECTIVE DATE OF 1962 AMENDMENT

Section 103 of act Oct. 24, 1962, provided that: "Sections 101 [amending sections 31–1501, 31–1511, 31–1521, 31–1531, 31–1532, 31–1533, 31–1536, 31–1542, 31–1543, 31–1544 and 31–1545] and 102 [repealing section 31–1502] of this title shall take effect as of January 1, 1963."

EFFECTIVE DATE OF 1958 AMENDMENT

Amendment of section by act Aug. 28, 1958, effective Jan. 1, 1959, see section 4(a) of act Aug. 28, 1958, set out as a note under section 31–1501.

CROSS REFERENCES

For installment payment of salaries of certain other school teachers and employees, see sections 31–609 and 31–609a.

Chapter 16.—PUBLIC HIGHER EDUCATIONAL INSTITUTIONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 9–220.

SUBCHAPTER I.—FEDERAL CITY COLLEGE

Sec.

31–1607. Federal City College and Washington Technical Institute considered established as land-grant colleges.
31–1608. Lump sum appropriation in lieu of donation of public lands or land scrip.
31–1609. Federal City College and Washington Technical Institute administered as land-grant colleges—Appropriations—Allocations to Federal Extension Service of Department of Agriculture.
31–1610. Federal City College and Washington Technical Institute to share grants and earnings equally.
31–1611. Construction of §§ 31–1607 and 31–1609.
31–1612. Satisfaction of State requirement of consent.

SUBCHAPTER I.—FEDERAL CITY COLLEGE

§ 31–1601. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 31–1602. Board of Higher Education—Composition—Appointment of members—Chairman—Tenure—Vacancies — Compensation — Removal — Immunity from liability.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 31–1603. Powers and duties of Board—Development of plans, establishment of College, and administration, generally.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1605.

§ 31–1604. Space and facilities.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 31–1605. Fiscal accountability.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 31–1607. Federal City College and Washington Technical Institute considered established as land-grant colleges.

In the administration of—

(1) the Act of August 30, 1890 (7 U.S.C. 321–326, 328) (known as the Second Morrill Act),

(2) the tenth paragraph under the heading "EMERGENCY APPROPRIATIONS" in the Act of March 4, 1907 (7 U.S.C. 322) (known as the Nelson Amendment),

(3) section 22 of the Act of June 29, 1935 (7 U.S.C. 329) (known as the Bankhead-Jones Act),

(4) The Act of March 4, 1940 (7 U.S.C. 331),

(5) the Agricultural Marketing Act of 1946 (7 U.S.C. 1621–1629), and

(6) section 31–1608,

the Federal City College and the Washington Technical Institute shall each be considered to be a college established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. 301–305, 307,

308) (known as the First Morrill Act); and the term "State" as used in the laws and provisions of law listed in the preceding paragraphs of this section shall include the District of Columbia. (Nov. 7, 1966, Pub. L. 89–791, title I, § 107, as added June 20, 1968, Pub. L. 90–354, § 1, 82 Stat. 241; Jan. 5, 1971, Pub. L. 91–650, title IV, § 401(a), 84 Stat. 1935.)

AMENDMENT

1971—Section 491(a) of Act Jan. 5, 1971, Pub. L. 91–650, amended section—

(1) by striking out "and" at the end of paragraph (4);

(2) by adding "and" at the end of paragraph (5);

(3) by adding after paragraph (5) the following new paragraph:

"(6) section 31–1608,"; and

(4) by striking out "Federal City College shall" and inserting in lieu thereof the following: "Federal City College and the Washington Technical Institute shall each".

APPLICABILITY OF 1971 AMENDMENTS

Section 401(d) of Act Jan. 5, 1971, Pub. L. 91–650, provided: "The amendments made by this section [amending §§ 31–1607, 31–1609, 31–1610 and enacting §§ 31–1611, 31–1612] shall apply with respect to (1) grants made to the District of Columbia under the Acts referred to in section 107 of the District of Columbia Public Education Act [§ 31–1607] and under section 109(b) of such Act [§ 31–1609(b)] for fiscal years beginning after June 30, 1971, and (2) any earnings, on and after July 1, 1971, of sums heretofore appropriated to the District of Columbia pursuant to section 108(b) of such Act [§ 31–1608]."

EFFECTIVE DATE

Section 2 of act June 20, 1968, Pub. L. 90–354, provided: "Sections 107 and 108 [31–1607, 31–1608 and amendment of 7 U.S.C. 329] of the District of Columbia Public Education Act (added by section 1 of this Act) shall take effect with respect to appropriations for fiscal years beginning after June 30, 1968."

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–1610—31–1612.

§ 31–1608. Lump-sum appropriation in lieu of donation of public lands or land scrip.

In lieu of extending to the District of Columbia those provisions of the Act of July 2, 1862 (7 U.S.C. 301–305, 307, 308), relating to donations of public lands or land scrip for the endowment and maintenance of colleges for the benefit of agriculture and the mechanic arts, there is authorized to be appropriated to the District of Columbia the sum of $7,241,706. Amounts appropriated under this subsection shall be held and considered to have been granted to the District of Columbia subject to those provisions of that Act applicable to the proceeds from the sale of land or land scrip. (Nov. 7, 1966, Pub. L. 89–791, title I, § 108(b); as added June 20, 1968, Pub. L. 90–354, § 1, 82 Stat. 241.)

CODIFICATION

The text of this section as above set out consists of subsection (b) of section 108 of the Act of June 20, 1968. Subsection (a) of the section is classified to 7 U.S.C. 329.

REFERENCE IN TEXT

"That Act" referred to in subsection (b), means the Act of July 2, 1862, set out as sections 301 to 305, 307 and 308 of title 7, U.S. Code.

EFFECTIVE DATE

See note under section 31–1607.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–1607, 31–1610, 31–1611.

§ 31–1609. Federal City College and Washington Technical Institute administered as land-grant colleges—Appropriations—Allocations to Federal Extension Service of Department of Agriculture.

(a) In the administration of the Act of May 8, 1914 (7 U.S.C. 341–346, 347a–349) (known as the Smith-Lever Act)—

(1) the Federal City College and the Washington Technical Institute shall each be considered to be a college established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862 (7 U.S.C. 301–305, 307, 308); and

(2) the term "State" as used in such Act of May 8, 1914, shall include the District of Columbia, except that the District of Columbia shall not be eligible to receive any sums appropriated under section 7 U.S.C. 343.

(b) In lieu of an authorization of appropriations for the District of Columbia under section 7 U.S.C. 343, there is authorized to be appropriated to the District of Columbia such sums as may be necessary to provide cooperative agricultural extension work in the District of Columbia under such Act. For the fiscal years ending June 30, 1969, and June 30, 1970, sums appropriated under this subsection may be used to pay the total cost of providing such extension work; and for each fiscal year thereafter such sums may be used to pay no more than one-half of such cost. Any reference in such Act (other than section 7 U.S.C. 343) to funds appropriated under such Act shall in the case of the District of Columbia be considered a reference to funds appropriated under this subsection.

(c) Four per centum of the sums appropriated under subsection (b) for each fiscal year shall be allotted to the Federal Extension Service of the Department of Agriculture for administrative, technical, and other services provided by the Service in carrying out the purposes of this section. (Nov. 7, 1966, Pub. L. 89–791, title I, § 109; as added June 20, 1968, Pub. L. 90–354, § 1, 82 Stat. 241; and amended Jan. 5, 1971, Pub. L. 91–650, title IV, § 401(b), 84 Stat. 1935.)

REFERENCE IN TEXT

"Such Act" referred to in subsection (b) means the Act of May 8, 1914, set out in sections 341 to 346, 347a to 349 of title 7, U.S. Code.

AMENDMENT

1971—Section 401(b) of act Jan. 5, 1971, Pub. L. 91–650, amended subsec. (a)(1) by striking out "Federal City College shall" and inserting in lieu thereof the following: "Federal City College and the Washington Technical Institute shall each".

APPLICABILITY OF 1971 AMENDMENTS

See section 401(d) of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 31–1607.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91—650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 31–1610—31–1612.

§ 31–1610. Federal City College and Washington Technical Institute to share grants and earnings equally.

Grants to the District of Columbia under the Acts referred to in section 31–1607 and under section 31–1609(b) and the earnings of sums appropirate under section 31–1608 shall be shared equally between the Federal City College and the Washington Technical Institute. (Nov. 7, 1966, Pub. L. 89–791, title I, § 110; as added Jan. 5, 1971, Pub. L. 91–650, title IV, § 401(c), 84 Stat. 1935.)

APPLICABILITY OF 1971 AMENDMENTS

See section 401(d) of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 31–1607.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1611.

§ 31–1611. Construction of §§ 31–1607 and 31–1609.

Sections 31–1607 and 31–1609 provide that the Washington Technical Institute shall be considered to be a college established for the benefit of agriculture and the mechanic arts in accordance with the provisions of the Act of July 2, 1862, for the purpose of enabling the Washington Technical Institute to share, under section 31–1610, with the Federal City College (1) grants under the Acts referred to in section 31–1607, (2) grants under section 31–1609(b), and (3) earnings of sums appropriated under section 31–1608. (Nov. 7, 1966, Pub. L. 89–791, title I, § 111; as added Jan. 5, 1971, Pub. L. 91–650, title IV, § 401(c), 84 Stat. 1936.)

REFERENCE IN TEXT

The act of July 2, 1862, referred to in text, is known as the First Morrill Act and is classified to 7 U.S.C. 301—305, 307, 308.

APPLICABILITY OF 1971 AMENDMENTS

See section 401(d) of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 31–1607.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

§ 31–1612. Satisfaction of State requirement of consent.

The enactment of sections 31–1607 and 31–1609 of this title shall, as respects the District of Columbia, be deemed to satisfy any requirement of State consent contained in any of the laws or provisions of law referred to in such sections. (Nov. 7, 1966, Pub. L. 89–791, title I, § 112, formerly § 110; as added June 20, 1968, Pub. L. 90–354, § 1, 82 Stat. 242; and renumbered Jan. 5, 1971, Pub. L. 91–650, title IV, § 401(c), 84 Stat. 1935.)

AMENDMENT

1971—Section 401(c) of act Jan. 5, 1971, Pub. L. 91–650, redesignated section 110 of the source statute (District of Columbia Public Education Act) as section "112", and inserted new sections numbered "110" and "111" which are classified to sections 31–1610 and 31–1611 of the code.

APPLICABILITY OF 1971 AMENDMENTS

See section 401(d) of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 31–1607.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

SUBCHAPTER II.—WASHINGTON TECHNICAL INSTITUTE

§ 31–1621. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

For provisions of subchapter I applicable to Washington Technical Institute, see §§ 31–1607 to 31–1612.

§ 31–1623. Powers and duties of Board—Development of plans, establishment of Institute, and administration, generally.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

For provisions of subchapter I applicable to Washington Technical Institute, see §§ 31–1607 to 31–1612.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 31–1625.

§ 31–1624. Space and facilities.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 31–1625. Fiscal accountability

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

For provisions of subchapter I applicable to Washington Technical Institute, see §§ 31–1607 to 31–1612.

TITLE 32.—ELEEMOSYNARY, CURATIVE, CORRECTIONAL, AND PENAL INSTITUTIONS

Chap. Sec.

6. Forest Haven 32–601
11. Interstate Compact on Juveniles 32–1101

Chapter 1.—ASSOCIATION FOR WORKS OF MERCY

§ 32–101. Custody and control of girls under 18 years of age—How obtained—Approval by probate court.

The Association for Works of Mercy, a charitable corporation in the District of Columbia, is hereby authorized and empowered to receive and have the custody and control of, and to suitably maintain, teach, employ, and discipline girls under the age of eighteen years, resident in the District of Columbia, until they attain the age of eighteen years. The right to the custody and control of any such girl shall be obtained in the manner following:

First. By a written instrument executed by the father of such girl, giving such custody and control to said association and renouncing parental rights.

Second. If the father be not living, or is unknown, or not resident in the District of Columbia, by a written instrument executed by the mother of such girl, giving such custody and control to said association and renouncing parental rights.

Third. By a written instrument executed by the guardian of the person of such girl, giving such custody and control to said association and renouncing the rights of guardianship.

Fourth. If there be no father, or mother, or guardian of such girl living, or known, resident in the District of Columbia, by an instrument in writing executed by such girl, surrendering herself to the custody, control, and maintenance of said association.

Fifth. No such instrument shall be effectual in law until it shall be approved by a judge of the court having probate jurisdiction by an indorsement of such approval thereon signed by such judge. (Oct 12, 1888, 25 Stat. 554, ch. 1095, § 1; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116; July 29, 1970, Pub. L. 91–358, title I, § 158(b)(1), 84 Stat. 576.)

AMENDMENT

1970—Section 158(b)(1) of Act July 29, 1970, Public Law 91–358 amended section by striking out "the judge of the orphans' court of the District of Columbia" and inserting in lieu thereof "a judge of the court having probate jurisdiction".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 32–104. Probate court may appoint association as guardian—Term of guardianship.

The court having probate jurisdiction shall have power to appoint the said association the guardian of the person of any girl under the age of eighteen years, in the same manner and with the same effect that it has power to appoint guardians of the person of female infants. And such guardianship shall continue until such girl shall attain the age of eighteen years, unless the probate court shall discharge the same or otherwise direct. (Oct. 12, 1888, 25 Stat. 554, ch. 1095, § 4; Mar. 3, 1901, 31 Stat. 1208, ch. 854, § 116; July 29, 1970, Pub. L. 91–358, title I, § 158(b)(2), 84 Stat. 576.)

AMENDMENT

1970—Section 158(b)(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out "orphans' court of the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 2.—WASHINGTON HUMANE SOCIETY

§§ 32–201 to 32–204.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 32–207, 32–211.

§ 32–205. Police to arrest law violators at request of member of society—Evidence of membership.

Members of the Metropolitan Police force of the District of Columbia, upon application of a member of the Washington Humane Society who has viewed a violation of a law or regulation of the District for the prevention of cruelty to animals, shall arrest the offending party without a warrant, and take him before the Superior Court of the District of Columbia for trial. Proper evidence of membership to a police officer shall be the exhibition of a badge or certificate of membership in the Society. (June 21, 1870, 16 Stat. 158, ch. 135, § 5; R.S. D.C., § 998; Mar. 3, 1901, 31 Stat. 1196, ch. 854, § 43; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; Dec. 23, 1963, 77 Stat. 618, Pub. L. 88–241, § 12; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of act July 29, 1970, Pub. L. 91–358, amended section by striking out "District of Columbia Court of General Session" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CROSS REFERENCE

Arrest without warrant, generally, see 23–581.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 22–804, 22–809, 32–207, 32–211.

§§ 32–206, 32–207.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 32–207, 32–211.

§ 32–209. Commissioners to aid in enforcing laws affecting children—Detailing of police to assist society—Arrest of offenders—Children in house of ill-fame.

The commissioners of the District of Columbia shall, by the police force of said District, aid the said society, its officers and agents, in the enforcement of all laws relating to or affecting the protection of children; and the commissioners of the said District, and their successors, are authorized, in their discretion, to detail, from time to time, an officer or officers to aid specially in the work of said society, or they may commission any duly appointed agents of said society special police officers, without compensation; and such agents or officers shall have power to arrest, without warrant, all persons violating in their presence or sight any law relating to or affecting the protection of children, or other parties so offending by virtue of a warrant issued by the Family Division of the Superior Court, which offenders shall be taken by such agents or officers before the said Family Division of the Superior Court for trial. Said agents or officers are also hereby empowered to bring before the said court any child who is subjected to cruel treatment, wilful abuse, or neglect, or any child under seventeen years of age found in a house of ill-fame; and said court may commit such child to an orphan asylum or other public charitable institution in the District of Columbia, with the consent of the constituted authorities of such asylum or institution, or make such other disposition thereof as provided by law in cases of vagrant, destitute, or abandoned children. (Feb. 13, 1885, 23 Stat. 302, ch. 58, § 2; Mar. 19, 1906, 34 Stat 73, ch. 960, § 8; July 29, 1970, Pub. L. 91–358, title I, § 159(h), 84 Stat. 578.)

AMENDMENT

1970—Section 159(h) of Act July 29, 1970, Public Law 91–358 amended section by striking out "police court" and inserting in lieu thereof "Family Division of the Superior Court" and by striking out the proviso at the end thereof [this proviso is not in the Code].

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 3–116.

§ 32–210. Detailing of police to aid in enforcement of laws relating to cruelty to animals.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 3.—HOSPITALS AND ASYLUMS—GENERAL PROVISIONS

Sec.

32–305. Prosecutions in Superior Court.

§ 32–301. Private hospitals and asylums—To be licensed.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

GRANTS AND LOANS FOR CONSTRUCTION AND MODERNIZATION OF HOSPITALS

Pub. L. 90–457, act Aug. 3, 1968, 82 Stat. 631, section 1 provided: That this Act may be cited as the "District of Columbia Medical Facilities Construction Act of 1968".

AUTHORIZATION OF APPROPRIATIONS FOR GRANTS

SEC. 2. There are authorized to be appropriated for the fiscal year ending June 30, 1969, and for each of the next three fiscal years, such sums as may be necessary, not to exceed in the aggregate $40,052,000, to enable the Secretary of Health, Education, and Welfare (hereafter in this Act referred to as the "Secretary"), to make grants to assist in meeting the cost of projects for the modernization of public or nonprofit private hospitals and in meeting the cost of projects for the construction or modernization of public health centers, long-term care facilities, including extended care facilities, diagnostic or treatment centers, rehabilitation facilities, facilities for the mentally retarded, and community mental health centers in the District of Columbia. Sums so appropriated shall remain available until expended.

LOANS FOR THE CONSTRUCTION OR MODERNIZATION OF HOSPITALS AND OTHER HEALTH FACILITIES

SEC. 3. (a) The Secretary may make loans to assist in meeting the cost of projects for the construction or modernization of any hospital or other facility referred to in section 2 of this Act. The Secretary may make a loan under this section only if he determines that the applicant for the loan is unable to obtain the amount of such loan for the project from other public or private sources at reasonable rates of interest. The amount of any loan made under this section may not exceed 50 per centum of the cost of the project for which the loan is sought.

(b) Any such loan may be made only on the basis of an application submitted to the Secretary in such form and containing such information and assurances as he may prescribe.

(c) Each such loan shall bear interest at the rate of 2¼ per centum per annum on the unpaid balance thereof and shall be repaid over a period determined by the Secretary to be appropriate, but not exceeding 50 years.

(d) There is authorized to be appropriated $40,575,000 to carry out the provisions of this section.

APPROVAL OF APPLICATIONS

SEC. 4. (a) An application for a grant or loan with respect to any project may be approved by the Secretary under this Act only if an application for a grant with respect to such project has been filed under a Medical Facilities Act (which for purposes of this Act means title VI of the Public Health Service Act or, where appropriate, title II or part C of title I of the Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963) and—

(1) has been approved under a Medical Facilities Act and the application filed under this Act is for additional funds in connection therewith, or

(2) has been denied under a Medical Facilities Act because insufficient funds are available from the allotments of the District of Columbia under the applicable Medical Facilities Act to permit approval of the application.

In determining whether to approve an application for a grant under Medical Facilities Act for any project in the District of Columbia, the availability of additional funds for such project under this Act shall be taken into consideration. Approval of such application may be made contingent upon the approval of an application or applications with respect to such project under this Act and upon such additional funds being made so available.

(b) The Secretary shall establish criteria for determining the order in which to approve, under this Act, applications for grants and loans with respect to projects. Such criteria with respect to construction projects for the same type of facility (or for modernization projects) shall be the criteria developed by the State Agency of the District of Columbia pursuant to the State plan approved under the applicable Medical Facilities Act.

(c) In the case of any project with respect to which an application for a grant or loan is filed under this Act

and with respect to which an application for a grant has been denied under a Medical Facilities Act, such application under this Act may be approved only if there is compliance with the same terms and conditions (including determination, in accordance with the applicable State plan, that the project is needed) as are applicable to applications for grants under the Medical Facilities Act, other than the availability of sufficient funds in the appropriate allotment of the District of Columbia.

(d) An application for a grant or loan under this Act with respect to any project may not be approved unless an opportunity to review the application has been afforded to a body, found by the Secretary to be a responsible metropolitan areawide planning body, and any recommendations of such body that were timely made have been considered by the appropriate State agency of the District of Columbia and have been submitted to the Secretary in connection with the application.

PAYMENTS

SEC. 5. (a) Payments under this Act with respect to any project shall be made in the manner provided under the applicable Medical Facilities Act for payment of the Federal share of the cost of projects for which applications are approved under such Act; except that payments under this Act shall also be subject to such reasonable conditions as the Secretary deems appropriate to safeguard the Federal interest.

(b) The total of the payments of grants made under this Act with respect to any project, together with any payments made with respect thereto under a Medical Facilities Act, may not exceed—

(1) in the case of a construction project for a long-term care facility, including extended care facilities, a diagnostic or treatment center, or a rehabilitation facility, 66⅔ per centum of the cost of such project; and

(2) in the case of any other project (including a modernization project), 50 per centum of the cost of such project.

RECOVERY OF PAYMENTS

SEC. 6. (a) Payments of grants under this Act shall be subject to recovery or recapture under the same conditions and to the same extent as is provided under the applicable Medical Facilities Act with respect to payments made thereunder.

(b) If, at any time before a loan made under this Act has been repaid in full, an event occurs for which (if a grant had been made under a Medical Facilities Act) recovery by the United States would be authorized, the unpaid balance of the loan shall become immediately due and payable by the applicant, and any transferee of the facility for which such loan was made shall be liable to the United States for such repayment.

MEANING OF TERMS

SEC. 6. The terms used in this Act shall have the same meaning as when used in the applicable Medical Facilities Act.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32–302, 32–303, 32–305.

§ 32–302. Director of public health to enforce regulations—Inspection.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32–302, 32–303, 32–305.

§ 32–303. Penalties for violation of sections 32–301, 32–302 or regulations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32–302, 32–305.

§ 32–304. Commissioners of the District of Columbia to make regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(245) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32–302, 32–305.

§ 32–305. Prosecutions in Superior Court.

All prosecutions under sections 32–301 to 32–304 shall be in the Superior Court of the District of Columbia upon information signed by the corporation counsel of said District or by one of his assistants. (Apr. 20, 1908, 35 Stat. 65, ch. 148, § 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32–302.

§ 32–306. Smallpox hospital—Regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(246) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 32–308. Admission of pay patients to psychopathic ward of Gallinger Hospital.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(247) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 32–309. Admission of pay patients to contagious-disease ward of Gallinger Hospital.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(248) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 32–310. Admission of pay patients to Tuberculosis Hospital.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(249) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

NOTES TO DECISIONS

Governmental junction

In this case, the court held that the District of Columbia in expending public moneys for public purpose in connection with treatment of patient for tuberculosis was asserting public right in attempting to recover that amount, though suit was based on contract to pay for the services. *L. E. Weiss* v. *District of Columbia* (D.C. App. 1970, 263 A. 2d 638).

Statute of limitations

The statute of limitations does not apply to suit brought by District of Columbia to recover moneys expended on treating patient for tuberculosis though suit was based on contract to pay for those services. *L. E. Weiss* v. *District of Columbia* (D.C. App. 1970, 263 A. 2d 638).

§ 32–312. Children's Tuberculosis Sanatorium—Construction and equipping authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–313. Admission of pay patients to Children's Tuberculosis Sanatorium.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(250) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 32–316. Providence and Garfield Memorial Hospitals to accept contagious-disease cases sent by Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–322. Availability of appropriations to furnish medical services to non-indigent persons.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(251) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 32–323. Conveyance of property to Columbia Hospital.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32–324, 32–325.

§ 32–324. Restriction on use of property.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32–323.

§ 32–326. Standards of indigency—Emergency patients.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(252) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the extent provided in par. 252, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 32–327. Volunteer services in connection with medical services in Health Department.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–328. Volunteer services in connection with Glenn Dale Tuberculosis Sanatorium.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–329. Volunteer services in connection with Gallinger Municipal Hospital and the Tuberculosis Hospital.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 4.—SAINT ELIZABETHS HOSPITAL

§ 32–401. Expense of indigent insane admitted to Saint Elizabeths Hospital from District of Columbia—Admission.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–404. Reimbursements on account of expenditures for care of insane to be credited to the District of Columbia.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–408. Authorization to accept gifts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32–409 to 32–411.

§ 32–409. Same—Custody and investment of gifts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32–411.

§ 32–410. Same—Gifts of intangible personal property.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32–409.

§ 32–411. Same—Gifts of real property.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 32–409, 32–410.

§§ 32–412 to 32–414.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 32–415, 32–416.

§ 32–415. Regulations—Approval of Secretary of Health, Education, and Welfare.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32–416.

§ 32–416. Regulations relating to Board of Public Welfare—District of Columbia.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32–415.

Chapter 5.—INDUSTRIAL HOME SCHOOL

§ 32–501. Control and management—Board of Public Welfare—Supplies—Disposition of income.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–503. Exchange of portion of Naval Observatory grounds for portion of Industrial Home School site—Sale of balance of tract—Use of land if not sold—Funds available for new school site.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 6.—FOREST HAVEN

Sec.

32–601. Authority to acquire site, erect buildings for home and school—Title to land—Property under jurisdiction of Commissioners of the District of Columbia.
32–602. Control and supervision—Department of Public Welfare—Name.
32–603. "Substantially retarded person" defined.
32–604. Rules and regulations to be prescribed—Annual reports—Inventory.
32–605. Superintendent—Appointment and qualifications.
32–606. Sale of products—Disposition of proceeds.
32–607 to 32–628. Repealed.
32–629. Separability of provisions.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 21–1102.

§ 32–601. Authority to acquire site, erect buildings for home and school—Title to land—Property under jurisdiction of Commissioners of the District of Columbia.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 21–1101, 32–602.

§ 32–602. Control and supervision—Department of Public Welfare—Name.

The institution for the custody, care, education, training, and treatment of substantially retarded persons, established by section 32–601, shall be under the control and supervision of the Department of Public Welfare of the District, and shall be known as Forest Haven. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 1; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2; Oct. 22, 1970, Pub. L. 91–490, § 1(1), 84 Stat. 1087.)

AMENDMENT

1970—Section 1(1) of Act Oct. 22, 1970, Pub. L. 91–490, amended section as follows:

(A) by striking out "feeble-minded" and inserting "substantially retarded",

(B) by striking out "Board" and inserting "Department", and

(C) by striking out "The District Training School" and inserting "Forest Haven".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 21–1101.

§ 32–603. "Substantially retarded person" defined.

For the purpose of this chapter, the term "substantially retarded persons" means persons afflicted with mental defectiveness from birth or from an early age, so pronounced that they are incapable of managing themselves and their affairs, and who require supervision, control, and care for their own welfare, for the welfare of others, or for the welfare of the community, and who are not insane nor of unsound mind to such an extent as to require their commitment to a hospital for the mentally ill. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 2; Oct. 22, 1970, Pub. L. 91–490, § 1(2), 84 Stat. 1087.)

AMENDMENT

1970—Section 1(2) of act Oct. 22, 1970, Pub. L. 91–490, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code.

CROSS REFERENCE

Other provisions concerning incompetent persons, see title 21.

§ 32–604. Rules and regulations to be prescribed—Annual reports—Inventory.

The Department of Public Welfare shall make all necessary rules and regulations for enforcing discipline, for imparting instruction or preserving health, and for the physical, intellectual, and moral training of the patients of said institution. The said Department shall make annually to the Commissioners of the District of Columbia a report for the preceding fiscal year ending the 30th day of June. Said report shall show for such period the number and names of the superintendent, officers, teachers, and all other regular employees, and the salaries paid to each, and what, if any, other emoluments are allowed and to whom. Said Department shall also cause a full and accurate inventory to be taken at the close of each fiscal year, showing the number of acres of land and the value thereof, the number, kind, and value of buildings, the various kinds of personal property and the value thereof, and a copy of said inventory, duly vertified on oath by the officer making said inventory, shall accompany said report. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 3; Mar. 16, 1926, 44 Stat. 208, ch. 58, §§ 1, 2; Oct. 22, 1970, Pub. L. 91–490, § 1(3), 84 Stat. 1087.)

AMENDMENT

1970—Section 1(3) of act Oct. 22, 1970, Pub. L. 91–490, amended section as follows:

(A) by striking out "Board" and inserting "Department",

(B) by striking out "inmates" and inserting "patients", and

(C) by striking out "board" each place it appears and inserting "Department".

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(253) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 32–605. Superintendent—Appointment and qualifications.

The Department of Public Welfare shall appoint a superintendent, who shall be experienced in the

care, training, and treatment of the substantially retarded. He shall be the chief executive officer of the institution and may be removed by the commissioners of the District of Columbia upon recommendation of the Department. (Mar. 3, 1925, 43 Stat. 1135, ch. 460, § 4; Mar. 16, 1926, 44 Stat. 208, 209, ch. 58, §§ 1, 2, and 5; Oct. 22, 1970, Pub. L. 91–490, § 1(4), 84 Stat. 1087.)

AMENDMENT

1970—Section 1(4) of act Oct. 22, 1970, Pub. L. 91–490, amended section as follows:

(A) by striking out "Board" and inserting "Department",

(B) by striking out "feeble-minded" and inserting "substantially retarded", and

(C) by striking out "board" and inserting "Department".

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 7B.—PLACEMENT OF CHILDREN IN FAMILY HOMES

§ 32–782. Child-placing agency—License.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–783. Appointment of supervisory committee by Commissioners—Composition and tenure—Chairman—Promulgation of rules and regulations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(254) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32–790.

§ 32–784. Application for license—Form—Investigation by Board—Provisional license—Term and renewal.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32–782.

§ 32–785. Persons authorized to place children—Custody, control, supervision, and visitation by agency—Confidential records.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–785a. Agreements with child placement agencies outside of the District—Authority of Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–786. Agency vested with parental rights—Consent to adoption—Adoption petition—Parents' relinquishment of rights—Recordation.

(a) Whenever a licensed child-placing agency shall have been given the permanent care and guardianship of any child and the rights of the parent or parents of such child shall have been terminated by order of a court of competent jurisdiction or by a legally executed relinquishment of parental rights, the agency is vested with parental rights and may consent to the adoption of the child pursuant to the statutes regulating adoption procedure. Minority of a natural parent shall not be a bar to such parent's relinquishment to a licensed agency. Any relinquishment of parental rights other than by court order as provided in this subsection may be revoked upon the written consent of all the parties to said relinquishment and any such relinquishment may be transferred from one licensed child-placing agency to another licensed child-placing agency, in which case the second agency shall assume all the rights and duties of the first agency. For the purposes of this section, "licensed child-placing agency" shall mean any child-placing agency licensed pursuant to this chapter or any child-placing agency licensed or authorized by any State, Territory, or possession of the United States, by the Commonwealth of Puerto Rico, or by any foreign country or any state, province, or other governmental division of any foreign country for the care and placement of minors. Such transfer or relinquishment shall be filed in the Family Division of the Superior Court for the District of Columbia, as hereinafter provided in this section. Except in proceedings for adoption, no parent may voluntarily assign or otherwise transfer to another his rights and duties with respect to the permanent care and control of a child under sixteen years of age unless such relinquishment of parental rights is made to a licensed child-placing agency. Such relinquishment of parental rights shall be a statement in writing signed by the person relinquishing such parental rights who shall subscribe his name thereto and acknowledge the same before a representative of the licensed child-placing agency in the presence of at least one witness. Said relinquishment of parental rights shall be recorded and filed in a properly sealed file in the Family Division of the Superior Court for the District of Columbia. The seal of said file shall not be broken except for good cause shown and upon the written order of a judge of said court.

(b) The Commissioners or their designated agents are empowered to accept permanent care and guardianship of any child by a legally executed relinquishment of parental rights and when vested with such parental rights shall exercise them in the same manner as prescribed herein for a licensed child-placing agency. Such parental relinquishment taken by the Commissioners or their designated agents shall be subject to the same rights and requirements as to form, transfer, and disposition as are prescribed herein for a licensed child-placing agency. (Apr. 22, 1944, 58 Stat. 194, ch. 174, § 6; June 8, 1954, 68 Stat. 248, ch. 273, § 5; Apr. 11, 1956,

70 Stat. 113, ch. 204, § 107(c); Aug. 21, 1959, 73 Stat. 413, Pub. L. 86–177, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 159(i), 84 Stat. 578.)

AMENDMENT

1970—Section 159(i) of Act July 29, 1970, Public Law 91–358 amended section by striking out "Domestic Relations Branch of the Municipal Court" and inserting in lieu thereof "Family Division of the Superior Court."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 16–304.

§ 32–787. Revocation of license of child-placing agency—Notice—Retirement.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–790. Compensation for services in connection with child placement.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–791. "Commissioners" defined—Delegation of functions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 8.—NATIONAL TRAINING SCHOOL FOR BOYS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 32–907.

§ 32–801. Name.

CROSS REFERENCE

Federal Youth Corrections Act, applicability to the District, see 18 U.S.C. 5024, 5025.

§ 32–803. One Commissioner of District to be trustee.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–808. Superintendent and other employees—Appointment—Compensation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32–811.

§ 32–813. Report by officers to Commissioners of District—Contents.

TRANSFER OF FUNCTIONS TO COMMISSIONERS

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–821. Board of Trustees authorized to parole—Attorney General.

SECTIONS REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32–820.

Chapter 9.—NATIONAL TRAINING SCHOOL FOR GIRLS

HISTORICAL NOTE

The act of July 31, 1953, Pub. L. 173, 67 Stat. 286, gave authorization for the National Training School for Girls to be known as the Industrial Home for Colored Girls. The same act authorized the construction of a new Industrial Home School for Colored Children near Laurel, Maryland. The act of July 1, 1954, Pub. L. 468, 68 Stat. 385, authorized the Industrial Home School for Colored Girls to be combined with and become a part of the Industrial Home School for Colored Children and finally the act of September 4, 1957, Pub. L. 85-285, authorized the disposition of "so much of the land of the United States reserved for a site for the National Training School for Girls by the act of July 14, 1892 (27 Stat. 165)." The compilers are informed that the present institution is located at Laurel, Maryland, and is known as the D.C. Children's Center.

§ 32–902. Authority of Board of Public Welfare—Powers—Property.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–904. By-laws, rules, and regulations—Release of girls.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402 (255) of Reorg. Plan No. 3, of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 32–905. Officers and employees—Appointment—Compensation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–908. Girls committed—Commitment by court or judge.

REFERENCES IN TEXT

The reference in this section to "section 11–909 and 11–910", which had reference to such sections as set out in the 1961 edition of the official D.C. Code, may be a typographical error, as § 11–909 thereof related to summons, notice, and custody of a child pursuant to the initiation of proceedings in the Juvenile Court, and § 11–910 thereof related to service of such summons. Therefore, they do not appear to be relevant with respect to the exception clause in which they are cited in this section.

In the official D.C. Code of 1929, in which this section was set out as § 218 of Title 8, the reference in the exception clause was to §§ 258 and 259 of Title 18 of that Code, which sections represented classifications of §§ 8 and 9, respectively, of the Juvenile Court Act of 1906. Section 8 of that Act (D.C. Code 1929, Title 18, § 258) prescribed the jurisdiction of the Juvenile Court of the District of Columbia, and § 9 thereof (D.C. Code 1929, Title 18, § 259) contained definitions, including the definition of "delinquent" children. After the general amendment of the Juvenile Court Act of 1906 by the Act of June 1, 1938, ch. 309, 52 Stat. 596, the said jurisdictional and definitive provisions of §§ 8 and 9 of the 1906 Act, were covered, with substantial changes, by §§ 5 and 6 thereof, which, in the 1940, 1951 and 1961 editions of the Code, were classified to §§ 11–906 and 11–907; and said §§ 8 and 9 of the 1906 Act, as so amended, then relating to summons, etc., as mentioned above, were classified in those Codes to said §§ 11–909 and 11–910.

All of the sections mentioned above were repealed in the revision and reenactment of Part II of the D.C. Code by Act Dec. 23, 1963, Pub. L. 88–241, 77 Stat. 478, eff. Jan. 1, 1964. Sections 11–906 and 11–907, containing, respectively, definitions and the jurisdictional provisions, were covered by §§ 11–1551, 11–1553, 11–554, 11–1556, 11–1557, 11–1583 and 16–2301; and §§ 11–909 and 11–910 (which, as stated above, appear to be irrelevant with respect to the exception clause in this section in which they are cited) were covered by §§ 16–2303 and 16–2304. Title 11 and chapter 23 of title 16 were again revised and amended generally by sections 111 and 121(a) of Pub. L. 91–358, and subject matter formerly covered by sections 16–2303 and 16–2304 is now covered generally by sections 16–2306, 16–2309, 16–2310, and 16–2316.

Chapter 10.—MISCELLANEOUS

§ 32–1001. Visitation of charities supported in whole or in part by District revenues by Commissioners of the District of Columbia.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–1002. Visitorial power of Commissioners over certain designated organizations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–1003. Appropriations for charitable and reformatory institutions to be lien on property.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 32–325.

§ 32–1006. Voluntary medical service for charitable institutions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 32–1009. Sale of products of Home for Aged and Infirm.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402 (256) of Reorg. Plan 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 32–1010. Admission of pay patients to Home for Aged and Infirm.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402 (257) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 11.—INTERSTATE COMPACT ON JUVENILES

Sec.
32–1101. Findings and purpose.
32–1102. Authority to enter into compact.
32–1103. Compact administrator—Appointment—Authority—Duties.
32–1104. Enforcement of compact.
32–1105. Construction of compact.
32–1106. Congressional authority.

§ 32–1101. Findings and purpose.

(a) The Congress finds that (1) juveniles who are not under proper supervision and control, or who have absconded, escaped, or run away, are likely to endanger their own health, morals, and welfare, and the health, morals, and welfare of others, and (2) the cooperation of the District of Columbia with the States is necessary to provide for the welfare and protection of juveniles and other persons in the District of Columbia.

(b) The Congress intends, in authorizing the District of Columbia to adopt the Interstate Compact on Juveniles, to have the District of Columbia cooperate fully with the States (1) in returning juveniles to those States requesting their return, and (2) in accepting and providing for the return of juveniles who are residents of the District of Columbia and who are found or apprehended in a State. (July 29, 1970, Pub. L. 91–358, § 401, title IV, 84 Stat. 657.)

EFFECTIVE DATE

Section 901(b)(2) of Act July 29, 1970, Pub. L. 91–358 provided in part:

"Title IV [Secs. 32–1101 to 32–1106] shall take effect on the date of the enactment of this Act." [July 29, 1970]

§ 32–1102. Authority to enter into compact.

(a) The Commissioner of the District of Columbia (hereafter in this title referred to as the "Commissioner") is authorized to enter into and execute on behalf of the District of Columbia a compact with any State or States legally joining therein in the form substantially as follows: [Subsection (b) follows Article XV of Compact]

"THE INTERSTATE COMPACT ON JUVENILES

"The contracting states solemnly agree:

"ARTICLE I—Findings and Purposes

"That juveniles who are not under proper supervision and control, or who have absconded, escaped or run away, are likely to endanger their own health, morals and welfare, and the health, morals and welfare of others. The cooperation of the states party to this compact is therefore necessary to provide for the welfare and protection of juveniles and of the public with respect to (1) cooperative supervision of delinquent juveniles on probation or parole; (2) the return, from one state to another, of delinquent juveniles who have escaped or absconded; (3) the return, from one state to another, of non-delinquent juveniles who have run away from home; and (4) additional measures for the protection of juveniles and of the public, which any two or more of the party states may find desirable to undertake cooperatively. In carrying out the provisions of this compact the party states shall be guided by the non-criminal, reformative and protective policies which guide their laws concerning delinquent, neglected or dependent juveniles generally. It shall be the policy of the states party to this compact to cooperate and observe their respective responsibilities for the prompt return and acceptance of juveniles and delinquent juveniles who become subject to the provisions of this compact. The provisions of this compact shall be reasonably and liberally construed to accomplish the foregoing purposes.

"ARTICLE II—Existing Rights and Remedies

"That all remedies and procedures provided by this compact shall be in addition to and not in substitution for other rights, remedies and procedures, and shall not be in derogation of parental rights and responsibilities.

"ARTICLE III—Definitions

"That, for the purposes of this compact, 'delinquent juvenile' means any juvenile who has been adjudged delinquent and who, at the time the provisions of this compact are invoked, is still subject to the jurisdiction of the court that has made such adjudication or to the jurisdiction or supervision of any agency or institution pursuant to an order of such court; 'probation or parole' means any kind of conditional release of juveniles authorized under the laws of the states party hereto; 'court' means any court having jurisdiction over delinquent, neglected or dependent children; 'state' means any state, territory or possessions of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and 'residence' or any variant thereof means a place at which a home or regular place of abode is maintained.

"ARTICLE IV—Return of Runaways

"(a) That the parent, guardian, person or agency entitled to legal custody of a juvenile who has not been adjudged delinquent but who has run away without the consent of such parent, guardian, person or agency may petition the appropriate court in the demanding state for the issuance of a requisition for his return. The petition shall state the name and age of the juvenile, the name of the petitioner and the basis of entitlement to the juvenile's custody, the circumstances of his running away, his location if known at the time application is made, and such other facts as may tend to show that the juvenile who has run away is endangering his own welfare or the welfare of others and is not an emancipated minor. The petition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the document or documents on which the petitioner's entitlement to the juvenile's custody is based, such as birth certificates, letters of guardianship, or custody decrees. Such further affidavits and other documents as may be deemed proper may be submitted with such petition. The judge of the court to which this application is made may hold a hearing thereon to determine whether for the purposes of this compact the petitioner is entitled to the legal custody of the juvenile, whether or not it appears that the juvenile has in fact run away without consent, whether or not he is an emancipated minor, and whether or not it is in the best interest of the juvenile to compel his return to the state. If the judge determines, either with or without a hearing. That[1] the juvenile should be returned, he shall present the appropriate court or to the executive authority of the state where the juvenile is alleged to be located a written requisition for the return of such juvenile. Such requisition shall set forth the name and age of the juvenile, the determination of the court that the juvenile has run away without the consent of a parent, guardian, person or agency entitled to his legal custody, and that it is in the best interest and for the protection of such juvenile that he be returned. In the event that a proceeding for the adjudication of the juvenile as a delinquent, neglected or dependent juvenile is pending in the court at the time when such juvenile runs away, the court may issue a requisition for the return of such juvenile upon its own motion, regardless of the consent of the parent, guardian, person or agency entitled to legal custody, reciting therein the nature and circumstances of the pending proceeding. The requisition shall in every case be executed in duplicate and shall be signed by the judge. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of such court. Upon the receipt of a requisition demanding the return of a juvenile who has run away, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No juvenile detained upon such order shall be delivered over to the officer whom the court demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a judge of a court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardain ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such juvenile over to the officer whom the court demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

"Upon reasonable information that a person is a juvenile who has run away from another state party to this compact without the consent of a parent, guardian, person or agency entitled to his legal custody, such juvenile may be taken into custody without a requisition and brought forthwith before a judge of the appropriate court who may appoint counsel or guardian ad litem for such juvenile and who shall determine after a hearing whether sufficient cause exists to hold the person, subject to the order of the court, for his own protection and welfare, for such a time not exceeding 90 days as will enable his return to another state party to this compact pursuant to a requisition for his return from a court of that state. If, at the time when a state seeks the return of a juvenile who has run away, there is pending in the state wherein he is found any criminal charge, or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such State, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this conpact, upon the establishment of their authority and the identity of the juvenile being returned, shall be permitted to transport such juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he ran away, the juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

"(b) That the state to which a juvenile is returned under this Article shall be responsible for payment of the transportation costs of such return.

"(c) That 'juvenile' as used in this Article means any person who is a minor under the law of the state of residence of the parent, guardian, person or agency entitled to the legal custody of such minor.

"ARTICLE V—Return of Escapees and Absconders

"(a) That the appropriate person or authority from whose probation or parole supervision a delinquent juvenile has absconded or from whose institutional custody he has escaped shall present to the appropriate court or to the executive authority of the state where the delinquent juvenile is alleged to be located a written requisition for the return of such delinquent juvenile. Such requisition shall state the name and age of the delinquent juvenile, the particulars of his adjudication as a delinquent juvenile, the circumstances of the breach of the terms of his probation or parole or of his escape from an institution or agency vested with his legal custody or supervision, and the location of such delinquent juvenile, if known, at the time the requisition is made. The requisition shall be verified by affidavit, shall be executed in duplicate, and shall be accompanied by two certified copies of the judgment, formal adjudication, or order of commitment which subjects such delinquent juvenile to probation or parole or to the legal custody of the institution or agency concerned. Such further affidavits and other documents as may be deemed proper may be submitted with such requisition. One copy of the requisition shall be filed with the compact administrator of the demanding state, there to remain on file subject to the provisions of law governing records of the appropriate court. Upon the receipt of a requisition demanding the return of a delinquent juvenile who has absconded or escaped, the court or the executive authority to whom the requisition is addressed shall issue an order to any peace officer or other appropriate person directing him to take into custody and detain such delinquent juvenile. Such detention order must substantially recite the facts necessary to the validity of its issuance hereunder. No delinquent juvenile detained upon such order shall be delivered over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him, unless he shall first be taken forthwith before a

[1] So in original. Probably should read "hearing that".

judge of an appropriate court in the state, who shall inform him of the demand made for his return and who may appoint counsel or guardian ad litem for him. If the judge of such court shall find that the requisition is in order, he shall deliver such delinquent juvenile over to the officer whom the appropriate person or authority demanding him shall have appointed to receive him. The judge, however, may fix a reasonable time to be allowed for the purpose of testing the legality of the proceeding.

"Upon reasonable information that a person is a delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, such person may be taken into custody in any other state party to this compact without a requisition. But in such event, he must be taken forthwith before a judge of the appropriate court, who may appoint counsel or guardian ad litem for such person and who shall determine, after a hearing, whether sufficient cause exists to hold the person subject to the order of the court for such a time, not exceeding 90 days, as will enable his detention under a detention order issued on a requisition pursuant to this Article. If, at the time when a state seeks the return of a delinquent juvenile who has either absconded while on probation or parole or escaped from an institution or agency vested with his legal custody or supervision, there is pending in the state wherein he is detained any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for an act committed in such state, or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of such state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the delinquent juvenile being returned, shall be permitted to transport such delinquent juvenile through any and all states party to this compact, without interference. Upon his return to the state from which he escaped or absconded, the delinquent juvenile shall be subject to such further proceedings as may be appropriate under the laws of that state.

"(b) That the state to which a delinquent juvenile is returned under this Article shall be responsible for the payment of the transportation costs of such return.

"ARTICLE VI—Voluntary Return Procedure

"That any delinquent juvenile who has absconded while on probation or parole, or escaped from an institution or agency vested with his legal custody or supervision in any state party to this compact, and any juvenile who has run away from any state party to this compact, who is taken into custody without a requisition in another state party to this compact under the provisions of Article IV(a) or of Article V(a), may consent to his immediate return to the state from which he absconded, escaped or ran away. Such consent shall be given by the juvenile or delinquent juvenile and his counsel or guardian ad litem if any, by executing or subscribing a writing, in the presence of a judge of the appropriate court, which states that the juvenile or delinquent juvenile and his counsel or guardian ad litem, if any, consent to his return to the demanding state. Before such consent shall be executed or subscribed, however, the judge, in the presence of counsel or guardian ad litem, if any, shall inform the juvenile or delinquent juvenile of his rights under this compact. When the consent has been duly executed, it shall be forwarded to and filed with the compact administrator of the state in which the court is located and the judge shall direct the officer having the juvenile or delinquent juvenile in custody to deliver him to the duly accredited officer or officers of the state demanding his return, and shall cause to be delivered to such officer or officers a copy of the consent. The court may, however, upon the request of the state to which the juvenile or delinquent juvenile is being returned, order him to return unaccompanied to such state and shall provide him with a copy of such court order; in such event a copy of the consent shall be forwarded to the compact administrator of the state to which said juvenile or delinquent juvenile is ordered to return.

"ARTICLE VII—Cooperative Supervision of Probationers and Parolees

"(a) That the duly constituted judicial and administrative authorities of a state party to this compact (herein called 'sending state') may permit any delinquent juvenile within such state, placed on probation or parole, to reside in any other state party to this compact (herein called 'receiving state') while on probation or parole, and the receiving state shall accept such delinquent juvenile, if the parent, guardian or person entitled to the legal custody of such delinquent juvenile is residing or undertakes to reside within the receiving state. Before granting such permission, opportunity shall be given to the receiving state to make such investigations as it deems necessary. The authorities of the sending state shall send to the authorities of the receiving state copies of pertinent court orders, social case studies and all other available information which may be of value to and assist the receiving state in supervising a probationer or parolee under this compact. A receiving state, in its discretion, may agree to accept supervision of a probational or parolee in cases where the parent, guardian or person entitled to the legal custody of the delinquent juvenile is not a resident of the receiving state, and if so accepted the sending state may transfer supervision accordingly.

"(b) That each receiving state will assume the duties of visitation and of supervision over any such delinquent juvenile and in the exercise of those duties will be governed by the same standards of visitation and supervision that prevail for its own delinquent juveniles released on probation or parole.

"(c) That, after consultation between the appropriate authorities of the sending state and of the receiving state as to the desirability and necessity of returning such a delinquent juvenile, the duly accredited officers of a sending state may enter a receiving state and there apprehend and retake any such delinquent juvenile on probation or parole. For that purpose, no formalities will be required, other than establishing the authority of the officer and the identity of the delinquent juvenile to be retaken and returned. The decision of the sending state to retake a delinquent juvenile on probation or parole shall be conclusive upon and not reviewable within the receiving state, but if, at the time the sending state seeks to retake a delinquent juvenile on probation or parole, there is pending against him within the receiving state any criminal charge or any proceeding to have him adjudicated a delinquent juvenile for any act committed in such state or if he is suspected of having committed within such state a criminal offense or an act of juvenile delinquency, he shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, detention or supervision for such offense or juvenile delinquency. The duly accredited officers of the sending state shall be permitted to transport delinquent juveniles being so returned through any and all states party to this compact, without interference.

"(d) That the sending state shall be responsible under this Article for paying the costs of transporting any delinquent juvenile to the receiving state or of returning any delinquent juvenile to the sending state.

"ARTICLE VIII—Responsibility for Costs

"(a) That the provisions of Articles IV(b), V(b) and VII(d) of this compact shall not be construed to alter or affect any internal relationship among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

"(b) That nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to Articles IV(b), V(b) or VII(d) of this compact.

"ARTICLE IX—Detention Practices

"That, to every extent possible, it shall be the policy of states party to this compact that no juvenile or delinquent juvenile shall be placed or detained in any prison, jail or lockup nor be detained or transported in association with criminal, vicious or dissolute persons.

"ARTICLE X—Supplementary Agreements

"That the duly constituted administrative authorities of a state party to this compact may enter into supplementary agreements with any other state or states party hereto for the cooperative care, treatment and rehabilitation of delinquent juveniles whenever they shall find that such agreements will improve the facilities or programs available for such care, treatment, and rehabilitation. Such care, treatment and rehabilitation may be provided in an institution located within any state entering into such supplementary agreement. Such supplementary agreements shall (1) provide the rates to be paid for the care, treatment and custody of such delinquent juveniles, taking into consideration the character of facilities, services and subsistence furnished; (2) provide that the delinquent juvenile shall be given a court hearing prior to his being sent to another state for care, treatment and custody; (3) provide that the state receiving such a delinquent juvenile in one of its institutions shall act solely as agent for the state sending such delinquent juvenile; (4) provide that the sending state shall at all times retain jurisdiction over delinquent juveniles sent to an institution in another state; (5) provide for reasonable inspection of such institutions by the sending state; (6) provide that the consent of the parent, guardian, person or agency entitled to the legal custody of said delinquent juvenile shall be secured prior to his being sent to another state; and (7) make provision for such other matters and details as shall be necessary to protect the rights and equities of such delinquent juveniles and of the cooperating states.

"ARTICLE XI—Acceptance of Federal and Other Aid

"That any state party to this compact may accept any and all donations: gifts and grants of money, equipment and services from the federal or any local government, or any agency thereof and from any person, firm or corporation, for any of the purposes and functions of this compact, and may receive and utilize the same subject to the terms, conditions and regulations governing such donations, gifts and grants.

"ARTICLE XII—Compact Administrators

"That the governor of each state party to this compact shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this compact.

"ARTICLE XIII—Execution of Compact

"That this compact shall become operative immediately upon its execution by any state as between it and any other state or states so executing. When executed it shall have the full force and effect of law within such state, the form or execution to be in accordance with the laws of the executing state.

"ARTICLE XIV—Renunciation

"That this compact shall continue in force and remain binding upon each executing state until renounced by it. Renunciation of this compact shall be by the same authority which executed it, by sending six months' notice in writing of its intention to withdraw from the compact to the other states party hereto. The duties and obligations of a renouncing state under Article VII hereof shall continue as to parolees and probationers residing therein at the time of withdrawal until retaken or finally discharged. Supplementary agreements entered into under Article X hereof shall be subject to renunciation as provided by such supplementary agreements, and shall not be subject to the six months' renunciation notice of the present Article.

"ARTICLE XV—Severability

"That the provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstances shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters."

[Subsec. (a) precedes Article I of the Compact]

(b) The Commissioner may enter into and execute on behalf of the District of Columbia the following additional articles to the Interstate Compact on Juveniles: (July 29, 1970, Pub. L. 91–358, § 402, title IV, 84 Stat. 658.)

EFFECTIVE DATE

Section 901(b)(2) of Act July 29, 1970, Pub. L. 91–358, provided in part:

"Title IV [Secs. 32–1101 to 32–1106] shall take effect on the date of the enactment of this Act." [July 29, 1970]

"ARTICLE XVI—Additional Provision Relating to Return of Minor Children

"This article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

"For the purposes of this article, 'child', as used herein, means any minor within the jurisdictional age limits of any court in the home state.

"When any child is brought before a court of a state of which such child is not a resident, and such state is willing to permit such child's return to the home state of such child, such home state, upon being so advised by the state in which such proceeding is pending, shall immediately institute proceedings to determine the residence and jurisdictional facts as to such child in such home state, and upon finding that such child is in fact a resident of said state and subject to the jurisdiction of the court thereof, shall within five days authorize the return of such child to the home state, and to the parent or custodial agency legally authorized to accept such custody in such home state, and at the expense of such home state, to be paid from such funds as such home state may procure, designate, or provide, prompt action being of the essence.

"ARTICLE XVII—Additional Provision Concerning Interstate Rendition of Juveniles Alleged to be Delinquent

"This article shall provide additional remedies, and shall be binding only as among and between those party states which specifically execute the same.

"All provisions and procedures of Articles V and VI of the Interstate Compact on Juveniles shall be construed to apply to any juvenile charged with being a delinquent by reason of a violation of any criminal law. Any juvenile, charged with being a delinquent by reason of violating any criminal law shall be returned to the requesting state upon a requisition to the state where the juvenile may be found. A petition in such case shall be filed in a court of competent jurisdiction in the requesting state where the violation of criminal law is alleged to have been committed. The petition may be filed regardless of whether the juvenile has left the state before or after the filing of the petition. The requisition described in Article V of the compact shall be forwarded by the judge of the court in which the petition has been filed."

§ 32–1103. Compact administrator—Appointment—Authority—Duties.

(a) The Commissioner shall appoint or designate an officer of the government of the District of Columbia (hereinafter in this section referred to as the "compact administrator") to administer the compact. The compact administrator shall serve at the pleasure of the Commissioner.

(b) The compact administrator, acting jointly with like officers of party States, shall promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator shall cooperate with all departments, agencies, and officers of the government of the District of Columbia in facilitating the proper administration of the compact or of any supplementary agreement entered into by the compact administrator under subsection (c) of this section.

(c) Subject to the approval of the Commissioner, the compact administrator may enter into supplementary agreements with appropriate State officials for the purpose of administering the compact.

(d) Subject to the approval of the Commissioner, the compact administrator may make or arrange for any payments necessary to discharge any financial obligations imposed upon the District of Columbia by the compact or by any supplementary agreement entered into under subsection (c) of this section. (July 29, 1970, Pub. L. 91–358, § 403, title IV 84 Stat. 665.)

EFFECTIVE DATE

Section 901(b)(2) of Act July 29, 1970, Pub. L. 91–358, provided in part:

"Title IV [Secs. 32–1101 to 32–1106] shall take effect on the date of the enactment of this Act." [July 29, 1970].

§ 32–1104. Enforcement of compact.

The courts, departments, agencies, and officers of the District of Columbia shall enforce the compact and shall take such action as may be necessary to carry out the purposes and intent of the compact which may be within their respective jurisdictions. (July 29, 1970, Pub. L. 91–358, § 404, title IV, 84 Stat. 666.)

EFFECTIVE DATE

Section 901(b)(2) of Act July 29, 1970, Pub. L. 91–358, provided in part:

"Title IV [Secs. 32–1101 to 32–1106] shall take effect on the date of the enactment of this Act." [July 29, 1970].

§ 32–1105. Construction of compact.

The compact shall not be construed to prohibit the adoption of any other plan or procedure for the District of Columbia for the return of any runaway juvenile. (July 29, 1970, Pub. L. 91–358, § 405, title IV, 84 Stat. 666.)

EFFECTIVE DATE

Section 901(b)(2) of Act July 29, 1970, Pub. L. 91–358, provided in part:

"Title IV [Secs. 32–1101 to 32–1106] shall take effect on the date of the enactment of this Act." [July 29, 1970].

§ 32–1106. Congressional authority.

The right to alter, amend, or repeal this title is expressly reserved by the Congress. (July 29, 1970, Pub. L. 91–358, § 406, title IV, 84 Stat. 666.)

EFFECTIVE DATE

Section 901(b)(2) of Act July 29, 1970, Pub. L. 91–358, provided in part:

"Title IV [Secs. 32–1101 to 32–1106] shall take effect on the date of the enactment of this Act." [July 29, 1970].

TITLE 33.—FOOD AND DRUGS

Chapter 1.—ADULTERATION

§ 33–104. Rules and regulations for collecting and examining drugs and food—Director of public health.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(258) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to the preparation of rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 33–109. Prosecutions—Penalties.

All prosecutions under this chapter shall be in the Superior Court of the District of Columbia, on information brought in the name of the District of Columbia, and on its behalf; and any person or persons violating any of the provisions of this chapter shall be deemed guilty of a misdemeanor, and upon conviction shall be punished by a fine of not less than five dollars nor more than one hundred dollars. (Feb. 17, 1898, 30 Stat. 248, ch. 25, § 9; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570).

AMENDMENT

Section 155(a) of Act July 29, 1970, Pub. L. 91–358, struck out "District of Columbia Court of General Sessions" and inserted in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding § 11–101.

§ 33–111. Special services for detection of adulteration.

CONTINUATION OF 1960 ACT

Section 15 of the District of Columbia Appropriations Act of Nov. 13, 1967, Pub. L. 90–134, 81 Stat. 441, provided in part:

"Except as otherwise provided herein, limitations and legislative provisions contained in the District of Columbia Appropriation Act, 1961, shall be continued for the fiscal year 1968." Similar provisions are contained in the following appropriation act:

1971—July 16, 1970, Pub. L. 91–337, § 14, 84 Stat. 437.
1970—Dec. 24, 1969, Pub. L. 91–155, § 15, 83 Stat. 433.
1969—Aug. 10, 1968, Pub. L. 90–473, § 15, 82 Stat. 700.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 3.—MILK, CREAM, AND ICE CREAM

Sec.
33–301. Production and transportation—Restriction.
33–302. Definitions.
33–303. Dairy requirements—Permit—Application.
33–304. Suspension of permit—Statement of reasons—Notice.
33–305. Shipment of dairy products into District permitted under certain conditions.
33–306. Pasteurization requirement.
33–307. Dairy products to be seized if brought into District illegally—Owner to be notified of seizure—Destruction.
33–308. Rules and regulations to protect supply—Publication.
33–309. Seller of dairy products in District to determine that shipper has permit.
33–310. Penalties—Prosecution.
33–311 to 33–319. Omitted.
33–320. No officer or employee of health department to be employee of a dairy or dealer in dairy supplies—"Dairy" defined.
33–321. Rules relative to milk supply applicable to States shipping to District.
33–322. Automobile allowance for inspectors.

CODIFICATION

The act entitled "An Act to regulate within the District of Columbia the sale of milk, cream, and ice cream, and for other purposes", approved Feb. 27, 1925, as amended by Act Aug. 8, 1946, 60 Stat. 936 (§§ 33–301 to 33–319 of this Code), was amended generally by section 601(a) of act Jan. 5, 1971, Pub. L. 91–650. The amendment reduced the number of sections to 10, which sections are classified as §§ 33–301 to 33–310. The effect of the amendment was to substitute, effective as of Dec. 31, 1971, a new dairy products law for the provisions that were contained in the 1925 Act. Sections 33–301 to 33–319, containing the 1925 Act as amended, but prior to its amendment by said act of Jan. 5, 1971, are set out in the 1967 edition of the Code.

§ 33–301. Production and transportation—Restriction.

None but pure, clean, and wholesome milk, cream, milk products, or frozen desserts conforming to standards established by the District of Columbia Council, not inconsistent with standards established by the United States Government, shall be produced in, or be shipped into, the District of Columbia. (Feb. 27, 1925, ch. 358, § 1, 43 Stat. 1004; Jan. 5, 1971, Pub. L. 91–650, title VI, § 601(a), 84 Stat. 1937.)

AMENDMENT

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91–650, amended section to read as above set out. For provisions of section before this amendment, see 1967 edition of the code.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 601(b) of Act. Jan. 5, 1971, Pub. L. 91–650, provided: "The amendment made by subsection (a) of this section [amending this chapter generally] shall take effect on December 31, 1971."

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of Act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

CROSS REFERENCES

D.C. Council may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

Filled milk, see 21 U.S.C. §§ 61–64.

Importation of milk and cream, see 21 U.S.C. §§ 141–149.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33–302, 33–304, 33–305, 33–307, 33–308, 33–310.

§ 33–302. Definitions.

As used in sections 33–101 to 33–310—

(1) The term "person" includes firms, associations, partnerships, and corporations in addition to individuals.

(2) The term "Commissioner" means the Commissioner of the District of Columbia or his designated agents.

(3) The term "District" means the District of Columbia. (Feb. 27, 1925, ch. 358, § 2, 43 Stat. 1004; Aug. 1, 1950, ch. 513, § 1, 64 Stat. 393; Jan. 5, 1971, Pub. L. 91–650, title VI, § 601(a), 84 Stat. 1937.)

AMENDMENT

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91–650, amended section to read as above set out. For provisions of section before this amendment, see 1967 edition of the code.

EFFECTIVE DATE OF 1971 AMENDMENT

See section 601(b) of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 33–301.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

§ 33–303. Dairy requirements—Permit—Application.

No person shall keep or maintain within the District a dairy farm, milk plant, or frozen dessert plant producing, as the case may be, milk, cream, milk products, or frozen desserts for sale in the District, or bring or send into the District for sale any milk, cream, milk product, or frozen dessert, without a permit so to do from the Commissioner, and then only in accordance with the terms of such permit. Such permit shall be valid only for the calendar year in which it is issued, and shall be renewable annually on or before the 1st day of January of each calendar year thereafter. Application for such permit shall be in writing upon a form prescribed by the Commissioner. (Feb. 27, 1925, ch 358, § 3, 43 Stat. 1004; Aug. 1, 1950, ch. 513, § 1, 64 Stat. 393; Jan. 5, 1971, Pub. L. 91–650, title VI, § 601(a), 84 Stat. 1937.)

AMENDMENT

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91–650, amended section to read as above set out. For provisions of section before this amendment, see 1967 edition of the code.

EFFECTIVE DATE OF 1971 AMENDMENT

See section 601(b) of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 33–301.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

§ 33–304. Suspension of permit—Statement of reasons—Notice.

The Commissioner is authorized to suspend any permit issued under the authority of sections 33–301 to 33–310 whenever, in his opinion, the public health is endangered by the impurity or unwholesomeness of milk, cream, milk product, or frozen dessert supplied by the holder of the permit, and the suspension shall remain in force until the Commissioner finds the danger no longer continues. Whenever any permit is suspended the Commissioner shall in writing furnish to the holder of such permit his reasons for such suspension, and each dealer receiving milk, cream, milk product, or frozen dessert from such holder shall also be promptly notified by the Commissioner in writing of the suspension of the permit. (Feb. 27, 1925, ch. 358, § 4, 43 Stat. 1005; Jan. 5, 1971, Pub. L. 91–650, title VI, § 601(a), 84 Stat. 1937.)

AMENDMENT

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91–650, amended section to read as above set out. For provisions of section before this amendment, see 1967 edition of the code.

EFFECTIVE DATE OF 1971 AMENDMENT

See section 601(b) of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 33–301.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

§ 33–305. Shipment of dairy products into District permitted under certain conditions.

Nothing in sections 33–301 to 33–310 shall be construed to prohibit (1) the shipment into the District of milk, cream, or milk products from shipping stations or plants having a sanitation compliance and enforcement rating of 90 per centum or better as determined by a milk sanitation rating officer certified by the Secretary of Health, Education, and Welfare, or (2) the shipment into the District of milk or cream for manufacture into frozen desserts and frozen desserts containing milk or cream which has been produced and transported in accordance with specifications established by a State or Federal regulatory or certifying agency and approved by the Commissioner. (Feb. 27, 1925, ch. 358, § 5, 43 Stat. 1005; Aug. 1, 1950, ch. 513, § 1, 64 Stat. 393; Jan. 5, 1971, Pub. L. 91–650, title VI, § 601(a), 84 Stat. 1937.)

AMENDMENT

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91–650, amended section to read as above set out. For provisions of section before this amendment, see 1967 edition of the code.

EFFECTIVE DATE OF 1971 AMENDMENT

See section 601(b) of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 33–301.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

§ 33–306. Pasteurization requirement.

No milk, cream, milk product, or frozen dessert shall be sold or offered for sale to a consumer in the District unless it has been pasteurized by a method acceptable to the Secretary of Health, Education, and Welfare. (Feb. 27, 1925, ch. 358, § 6, 43 Stat. 1005; Aug. 1, 1950, ch. 513, § 1, 64 Stat. 1005; Jan. 5, 1971, Pub. L. 91–650, title VI, § 601(a), 84 Stat. 1937.)

AMENDMENT

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91–650, amended section to read as above set out. For provisions of section before this amendment, see 1967 edition of the code.

EFFECTIVE DATE OF 1971 AMENDMENT

See section 601(b) of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 33–301.

§ 33–307. Dairy products to be seized if brought into District illegally—Owner to be notified of seizure—Destruction.

The Commissioner is authorized to seize all milk, cream, milk products, or frozen desserts which may be brought into the District in violation of the pro-

visions of sections 33–301 to 33–310. The owner of any such milk, cream, milk product, or frozen dessert shall immediately be notified of such seizure, and if he shall fail within twenty-four hours from the time such notice is given to him to remove or cause to be removed from the District the seized milk, cream, milk product, or frozen dessert, the Commissioner is authorized to destroy or otherwise dispose of it. (Feb. 27, 1925, ch. 358, § 7; 43 Stat. 1005; Aug. 1, 1950, ch. 513, § 1, 64 Stat. 393; Jan. 5, 1971, Pub. L. 91–650, title VI, § 601(a), 84 Stat. 1937.)

AMENDMENT

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91–650, amended section to read as above set out. For provisions of section before this amendment, see 1967 edition of the code.

EFFECTIVE DATE OF 1971 AMENDMENT

See section 601(b) of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 33–301.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

TRANSFER OF FUNCTIONS TO COMMISSIONER

For transfer of functions vested in Commissioners under former section 33–307, see § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(259) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under former section 33–307 to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 33–308. Rules and regulations to protect supply—Publication.

The District of Columbia Council is hereby authorized to make from time to time all such reasonable regulations or standards consistent with sections 33–301 to 33–310 as it deems necessary to protect the milk, cream, milk product, and frozen dessert supply of the District. Such regulations or standards shall be published once in a daily newspaper of general circulation in the District at least thirty days before any penalty may be exacted for violation thereof. (Feb. 27, 1925, ch. 358, § 8, 43 Stat. 1005; Jan. 5, 1971, Pub. L. 91–650, title VI, § 601(a), 84 Stat. 1938.)

AMENDMENT

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91–650, amended section to read as above set out. For provisions of section before this amendment, see 1967 edition of the code.

EFFECTIVE DATE OF 1971 AMENDMENT

See section 601(b) of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 33–301.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

CROSS REFERENCES

D.C. Council may regulate, modify, or eliminate license requirements and promulgate regulations, see §§ 47–2344, 47–2345.

Protection of life, health, and property rules and regulations generally, see § 1–226.

§ 33–309. Seller of dairy products in District to determine that shipper has permit.

No person in the District shall sell or offer for sale any milk, cream, milk product, or frozen dessert from any source until he shall have first determined that the person providing such milk, cream, milk product, or frozen dessert holds a permit from the Commissioner to ship milk, cream, milk products, or frozen desserts into the District. (Feb. 27, 1925, ch. 358, § 9, 43 Stat. 1005; Aug. 1, 1950, ch. 513, § 1, 64 Stat. 393; Jan. 5, 1971, Pub. L. 91–650, title VI, § 601(a), 84 Stat. 1938.)

AMENDMENT

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91–650, amended section to read as above set out. For provisions of section before this amendment, see 1967 edition of the code.

EFFECTIVE DATE OF 1971 AMENDMENT

See section 601(b) of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 33–301.

§ 33–310. Penalties—Prosecution.

Any person who violates any provision of sections 33–301 to 33–310 or the regulations or standards promulgated hereunder shall be punished by a fine of not more than $300 or imprisonment for not more than thrity days, or both. Prosecution shall be conducted in the Superior Court of the District of Columbia in the name of the District of Columbia by the Corporation Counsel or any of his assistants. (Feb. 27, 1925, ch. 358, § 10, 43 Stat. 1005; Jan. 5, 1971, Pub. L. 91–650, title VI, § 601(a), 84 Stat. 1938.)

AMENDMENT

1971—Section 601(a) of act Jan. 5, 1971, Pub. L. 91–650, amended section to read as above set out. For provisions of section before this amendment, see 1967 edition of the code.

EFFECTIVE DATE OF 1971 AMENDMENT

See section 601(b) of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 33–301.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33–302, 33–304, 33–305, 33–307, 33–308.

§§ 33–311 to 33–319. Omitted.

Sections, based on secs. 11 to 19 of act Feb. 27, 1925, were superseded by the general amendment of that act by act Jan. 5, 1971. See Codification note preceding § 33–301.

§ 33–315. Pasteurization to be done under regulations of director of public health.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(260) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under former section 33–315 with respect to prescribing regulations under which milk and cream shall be pasteurized, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Section 402(261) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under former

section 33–317 to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 4.—NARCOTIC DRUGS

§ 33–401. Definitions.

REFERENCES IN TEXT

Section 4731 of the Internal Revenue Code of 1954, referred to in par. (t), was repealed by section 1101(b)(3)(A) of Pub. L. 91–513, 84 Stat. 1292. For current definition of "opiate", see section 102(17) of the Controlled Substances Act, Pub. L. 91–513, 84 Stat. 1244 (21 U.S.C. 802(17)).

NOTES TO DECISIONS

Constitutionality

Statutes which made it unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense or compound any narcotic drug and which defined narcotic drug as including marijuana were constitutional. *S. V. Scott* v. *United States* (1968, 395 F. 2d 619, 129 U.S. App. D.C. 396).

§ 33–402. Acts declared unlawful.

CROSS REFERENCE

Arrest without warrant, generally, see § 23–581.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–546.

NOTES TO DECISIONS

Acquittal on appeal

Court of Appeals, on reversing convictions for narcotic vagrancy, maintaining common nuisance, and possession of narcotics, for failure of evidence to show that defendants had in their possession more than trace of heroin, would not remand for new trial, where there was no showing that government had additional proof that actual amounts involved were more than mere traces that were actually usable or saleable as narcotics. *L. Marshall and K. Watkins* v. *United States* (D.C. App. 1967, 229 A. 2d 449).

Concurrent sentences

Where defendants received concurrent sentences in prosecution for possession of narcotics, possession of implements of crime, unlawful entry and narcotics vagrancy and evidence was sufficient to support conviction of possession of narcotics and possession of implements of crime, District of Columbia Court of Appeals would not pass upon sufficiency of evidence to support other convictions. *S. Keith, R. L. Payne and T. J. Walker* v. *United States* (D.C. App. 1967, 232 A. 2d 92).

Constitutionality

Statutes which made it unlawful for any person to manufacture, possess, have under his control, sell, prescribe, administer, dispense or compound any narcotic drug and which defined narcotic drug as including marijuana were constitutional. *S. V. Scott* v. *United States* (1968, 395 F. 2d 619, 129 U.S. App. D.C. 396).

Custodial interrogation

Questions addressed to three defendants by arresting officers seeking an explanation for defendants' being in condemned house were noncoercive and not "custodial interrogation" within rule of Miranda v. State of Arizona. *S. Keith, R. L. Payne and T. J. Walker* v. *United States* (D.C. App. 1967, 232 A. 2d 92).

Duty to arrest

When police detectives saw narcotics paraphernalia in possession of defendants, officers were under statutory duty to arrest offenders immediately. *S. Keith, R. L. Payne and T. J. Walker* v. *United States* (D.C. App. 1967, 232 A. 2d 92).

Evidence—Admissibility of

In this case, since the police officer received reliable information in early morning hours that a large supply of heroin was to be transported in a few hours from a certain to an uncertain location for processing, and no magistrate was available so that officers were warranted in effecting entry without search warrant, and upon forcing entry found the apartment empty, the significant possibility of removal of contraband was an exceptional circumstance justifying search for the narcotics, and thus narcotics seized were properly admitted in prosecution for violation of this section. *C. E. Hailes* v. *United States* (D.C. App. 1970, 267 A. 2d 363).

Even if the arrest of defendant without warrant was invalid, capsules which the police officers recovered from trash pile in corner of fire-gutted pool hall after defendant and another person had been permitted by officers to leave the room were not seized in violation of defendant's Fourth Amendment rights and were admissible in prosecution for unlawful possession of narcotics. *United States* v. *E. L. Hayes* (D.C. App. 1970, 271 A. 2d 701).

Where defendants' arrest for narcotics violations was legal, narcotics paraphernalia seized at time of the arrest was properly admitted in defendants' joint trial for narcotics violations. *S. Keith, R. L. Payne and T. J. Walker* v. *United States* (D.C. App. 1967, 232 A. 2d 92).

—— Suppression

In this case, the court held that the trial judge did not err in denying motion to suppress heroin properly seized from defendant, one judge being of the opinion that the defendant was properly "seized" in rapidly moving on-street investigation and discarding of narcotics was not product of illegal police action, and second judge being of the opinion that the officer had probable cause to arrest defendant for disorderly conduct and seizure of heroin was therefore lawful. *W. Von Sleichter* v. *United States* (D.C. App. 1970, 267 A. 2d 336).

Intent

In this case, the court held that defendant's admission of his intent to use hypodermic and needle for criminal purpose was sufficiently corroborated and statement was sufficiently trustworthy for admission on proof of intent in prosecution for possession of implements of a crime, since although possession of a wet needle, needle holder and syringe but not the cooker, might not be sufficient to establish corpus delicti, it did constitute substantial independent evidence which would tend to establish trustworthiness of admission by defendant, a nonmedical person, to arresting officer. *L. F. McKoy* v. *United States* (D.C. App. 1970, 263 A. 2d 649).

Redirect examination

In prosecution for violations of federal narcotics laws, where on cross-examination of government's expert chemist, the defense elicited the fact that heroin is actually a morphine derivative, and that morphine can be legally imported into the United States, permitting witness on redirect to testify that in his opinion the narcotics involved were produced outside the United States was not improper on grounds that question was beyond qualifications of witness, since defense counsel's initial voyage into area of drug's source permitted full exploration by the government. *R. E. Green* v. *United States* (1967, 383 F. 2d 199, 127 U.S. App. D.C. 272).

Search and seizure

In this case, the court held that since there was probable cause for arrest without a warrant prior to search of defendant, who was suspected of robbing liquor store, seizure of heroin disclosed by search was valid. *R. Harrison* v. *United States* (D.C. App. 1970, 267 A. 2d 368).

Seizure of "means and instrumentality"

Narcotics paraphernalia is not the fruit of a crime, a weapon, or property the mere possession of which constitutes a crime; it is, however, the "means and instrumentality" by which narcotics may be illegally used, so that it is within exception permitting lawful seizure of certain articles even though not described in search warrant. *R. M. Edelin* v. *United States* (D.C. App. 1967, 227 A. 2d 395).

Hypodermic needle, syringe, bent spoon usable as a narcotics "cooker" and tissue paper, all wrapped in a stocking and found under pillow on bed, were an apparent narcotics user's "kit" and were the "means and instrumentality" by which narcotics might be illegally used, so that seizure of such paraphernalia under warrant authorizing seizure of check writing machine and undeter-

mined number of blank checks was valid under exception permitting instrumentalities and means by which a crime is committed to be seized even though not described in search warrant, and such evidence was not subject to suppression in narcotics prosecution. *Id.*

Stipulations

Refusal of the trial court to allow defense to question admissibility, on ground of an illegal search and seizure, of heroin found on the defendant on theory that the stipulation between prosecution and defense that material removed from defendant was heroin and that chain of custody need not be proved, removed necessity of introducing substance into evidence and in turn precluded opportunity for objection to its admission, constitutes reversible error. *F. Purvis* v. *United States* (D.C. App. 1970, 270 A. 2d 501).

Sufficiency of evidence

Absence of any proof that defendants had in their possession more than trace of heroin or that such trace could be used or dispensed as narcotic required reversal of convictions for narcotic vagrancy, maintaining common nuisance, and possession of narcotics. *L. Marshall and K. Watkins* v. *United States* (D.C. App. 1967, 229 A. 2d 449).

Where there is only trace of substance, a chemical constituent not quantitatively determined because of minuteness, and there is no additional proof of its usability as narcotic, there can be no conviction under statute making it illegal for person to maintain place resorted to by drug addicts for purpose of using narcotic drugs or used for illegal keeping or sale of same. *Id.*

Sufficiency of evidence of possession

Where there is only a trace of substance, a chemical constituent not quantitatively determined because of minuteness, and there is no additional proof of its usability as a narcotic, there can be no conviction for unlawful possession of a narcotic. *R. M. Edlin* v. *United States* (D.C. App. 1967, 227 A. 2d 395).

Evidence that microscopic chemical analysis of narcotics paraphernalia disclosed traces of heroin was insufficient, in absence of any additional proof as to usability of traces as a narcotic, to show illegal possession of a narcotic drug. *Id.*

Warning of constitutional rights

The case was remanded to determine whether defendant who was convicted of possession of implements of crime had been warned of his constitutional rights by arresting officers before he made incriminating statements. *W. J. Johnson* v. *United States* (D.C. App. 1969, 255 A. 2d 494).

§ 33–403. Manufacturers and wholesalers—License required.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–404.

§ 33–405. Use of official written orders.

REFERENCES IN TEXT

Section 4702 of the Internal Revenue Code of 1954, referred to in text, was repealed by section 1101(b)(3)(A) of Pub. L. 91–513, 84 Stat. 1292. For current provisions, see the Controlled Substances Act, Pub. L. 91–513, 84 Stat. 1242 (21 U.S.C. 801 et seq.).

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(262) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–410.

§ 33–406. Sale on written orders—Vendees—"Lawful possession" defined.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33–407, 33–410, 33–413.

§ 33–408. Sales by apothecaries.

REFERENCES IN TEXT

Section 4705(c)(2) of the Internal Revenue Code of 1954, referred to in subsec. (b), was repealed by section 1101(b)(3)(A) of Pub. L. 91–513, 84 Stat. 1292. For current provisions, see the Controlled Substances Act, Pub. L. 91–513, 84 Stat. 1242 (21 U.S.C. 801 et seq.).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–410.

§ 33–409. Professional use of narcotic drugs—Return of unused drugs.

REFERENCES IN TEXT

Section 4705(c)(2) of the Internal Revenue Code of 1954, referred to in subsec. (c), was repealed by section 1101(b)(3)(A) of Pub. L. 91–513, 84 Stat. 1292. For current provisions, see the Controlled Substances Act, Pub. L. 91–513, 84 Stat. 1242 (21 U.S.C. 801 et seq.).

§ 33–410. Preparations exempted—Conditions—Paregoric.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33–411, 33–420.

§ 33–414. Search warrants — Requirements — Form — Contents—Return—Penalty for interfering with service.

(a) A search warrant may be issued by any judge of the Superior Court of the District of Columbia or by a United States commissioner for the District of Columbia when any narcotic drugs are manufactured, possessed, controlled, sold, prescribed, administered, dispensed, or compounded, in violation of the provisions of this chapter, and any such narcotic drugs and any other property designed for use in connection with such unlawful manufacturing, possession, controlling, selling, prescribing, administering, dispensing, or compounding, may be seized thereunder, and shall be subject to such disposition as the court may make thereof and such narcotic drugs may be taken on the warrant from any house or other place in which they are concealed.

(b) A search warrant cannot be issued but upon probable cause supported by affidavit particularly describing the property and the place to be searched.

(c) The judge or commissioner must, before issuing the warrant, examine on oath the complainant and any witnesses he may produce, and require their affidavits or take their depositions in writing and cause them to be subscribed by the parties making them.

(d) The affidavits or depositions must set forth the facts tending to establish the grounds of the application or probable cause for believing that they exist.

(e) If the judge or commissioner is thereupon satisfied of the existence of the grounds of the application or that there is probable cause to believe their existence, he must issue a search warrant, signed by him, to the major and superintendent of police of the District of Columbia or any member of the Metropolitan police department, stating the particular grounds or probable cause for its issue and the names of the persons whose affidavits have been taken in support thereof, and commanding him forthwith to search the place named for the property specified and to bring it before the judge or commissioner.

(f) A search warrant may in all cases be served by any of the officers mentioned in its direction, but

by no other person, except in aid of the officer on his requiring it, he being present and acting in its execution.

(g) The officer may break open any outer or inner door or window of a house, or any part of a house, or anything therein, to execute the warrant, if, after notice of his authority and purpose, he is refused admittance.

(h) The judge or commissioner shall insert a direction in the warrant that it may be served at any time in the day or night.

(i) A search warrant must be executed and returned to the judge or commissioner who issued it within ten days after its date; after the expiration of this time the warrant, unless executed, is void.

(j) When the officer takes property under the warrant, he must give a copy of the warrant together with a receipt for the property taken (specifying it in detail) to the person from whom it was taken by him, or in whose possession it was found; or in the absence of any person, he must leave it in the place where he found the property.

(k) The officer must forthwith return the warrant to the judge or commissioner and deliver to him a written inventory of the property taken, made publicly or in the presence of the person from whose possession it was taken, and of the applicant for the warrant, if they are present, verified by the affidavit of the officer at the foot of the inventory and taken before the judge or commissioner at the time, to the following in effect: "I, ————, the officer by whom this warrant was executed, do swear that the above inventory contains a true and detailed account of all the property taken by me on the warrant."

(*l*) The judge or commissioner must thereupon, if required, deliver a copy of the inventory to the person from whose possession the property was taken and to the applicant for the warrant.

(m) The judge or commissioner must annex the affidavits, search warrant, return, inventory, and evidence, and at once file the same, together with a copy of the record of his proceedings, with the clerk of the Superior Court of the District of Columbia.

(n) Whoever shall knowingly and willfully obstruct, resist, or oppose any such officer or person in serving or attempting to serve or execute any such search warrant, or shall assault, beat, or wound any such officer or person, knowing him to be an officer or person so authorized, shall be fined not more than $1,000 or imprisoned not more than two years. (June 20, 1938, 52 Stat. 792, ch. 532, § 14; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 24, 1956, 70 Stat. 620, ch. 676, title III, § 301(k); July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

REFERENCE IN TEXT

The Act of Oct. 17, 1968, Pub. L. 90–578, terminated the office of United States commissioner and established in place thereof the office of United States magistrate. The Act became operative in the District of Columbia on June 27, 1969, when two United States magistrates assumed the office pursuant to appointment by order of the District Court dated June 20, 1969. See §§ 401(a) and 402(a) (b) of said Act (28 U.S.C. 631 note).

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Pub. L. 91–358, amended subsecs. (a) and (m) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding § 11–101.

CROSS REFERENCE

Search warrants, generally, see §§ 23–521 to 23–525.

NOTES TO DECISIONS

Delay in execution

In this case, the court held that defendant failed to show that eight-day delay in executing search warrant after it was issued had prejudiced him. *J. E. Curtis* v. *United States* (D.C. App. 1970, 263 A. 2d 653).

Even an unreasonable time lag in execution of search warrant must prejudice defendant to render search invalid. *Id.*

Under this section which provides that the warrant command the search "forthwith" and that the warrant must be executed within 10 days after its date, delay within 10-day limitation does not, standing alone, vitiate warrant. *W. J. Johnson* v. *United States* (D.C. App. 1969, 255 A. 2d 494).

Since prejudice was not claimed by reason of failure to execute search warrant until six days after its issuance, the delay did not vitiate the warrant and did not require suppression of evidence obtained pursuant to the warrant. *Id.*

Description of premises

In an appeal from an order of District of Columbia Court of General Sessions granting motion to suppress evidence, the court held that a warrant ordering search of "Entire Premises, 2nd Floor Front" at specified address described the place to be searched with sufficient particularity to be valid, and thus motion to suppress evidence seized should have been denied, though second floor of the premises was divided into two apartments, each fronting on street, where affidavit, referring to specific apartment number, was attached to the warrant and sufficiently referred to therein to enable officer executing warrant to look at affidavit and determine place intended. *United States* v. *S. H. Moore et ano.* (D.C. App. 1970, 263 A. 2d 652).

Execution of search warrant

Requirement of this section that search warrant command search "forthwith" is to insure that probable cause existing when warrant issued also exists when it is executed. *J. E. Curtis* v. *United States* (D.C. App. 1970, 263 A. 2d 653).

Subject of search

Under the circumstances of this case, it was not unreasonable for officers to seize pistol which, as convicted felon, defendant was forbidden to possess, incidental to authorized search of his apartment for narcotics, in absence of showing that presence of pistol on premises was attributable to eight-day delay in execution of search warrant *J. E. Curtis* v. *United States* (D.C. App. 1970, 263 A. 2d 653).

§ 33–416. Common nuisances.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 23–546.

NOTES TO DECISIONS

Elements of offense

In order to convict a defendant of keeping a place to which drug addicts resort for the purpose of using narcotic drugs, it is unnecessary to prove that drugs were or had been kept on the premises; however, such proof is essential to sustain a conviction of maintaining a place used for the illegal keeping or selling of narcotic drugs; and there must in addition be proof that the narcotic

drugs kept or sold on the premises were of a usable or salable quantity. *L. E. Gantt* v. *United States* (D.C. App. 1970, 267 A. 2d 350).

Evidence—Sufficiency

In this case the court agreed that at the time the motion for judgment of acquittal was made there existed sufficient evidence, including fact that narcotic paraphernalia was present in apartment and that rent receipts indicated defendant lived in the apartment, to present to a jury the question of whether defendant kept or maintained a place resorted to by drug addicts for the purpose of using drugs; and since, though it was doubtful whether a jury question existed on alternative charge that the defendant maintained a place used for the illegal keeping or selling of drugs, there was sufficient evidence to support a verdict of guilt of maintaining a common nuisance, and the trial court properly denied the acquittal motion. *L. E. Gantt* v. *United States* (D.C. App. 1970, 267 A. 2d 350).

Prejudicial error

In a trial involving the owner of a rooming house for permitting marijuana to be smoked on his premises, it was not prejudicial error to a quash subpoena ad testificandum for a material defense witness who was awaiting trial on charges relating to the very transactions to which he would be requested to testify in owner's trial where trial court was familiar with evidence to which witness was to testify and witness' attorney had informed court that witness would invoke privilege against self-incrimination if he were called to testify. *D. G. Harris* v. *United States* (D.C. App. 1969, 255 A. 2d 489).

Reversible error

In view of the evidence in this case, including witness' testimony that he had lived with defendant for about three months prior to his arrest and had used heroin in the apartment over five times, the trial court did not err in accepting a general verdict of guilt after instructing the jurors that they could find the defendant guilty of violating either or both alternative provisions of this section making it a common nuisance to maintain a place resorted to by narcotic drug addicts for the purpose of using narcotic drugs or to maintain a place used for the illegal keeping or selling of drugs. *L. E. Gantt* v. *United States* (D.C. App. 1970, 267 A. 2d 350).

§ 33–416a. Vagrancy—Narcotic drug user—Penalties—Conditions imposed.

* * * * *

(f) Upon affirmative determination that the person arrested is a narcotic drug user, or if the person has been convicted of a narcotic offense in the District of Columbia or elsewhere, and if such person is also a vagrant as hereinbefore defined, he shall be charged with the offense of vagrancy within the meaning of this section and arraigned in the Superior Court of the District of Columbia where the prosecution shall be conducted in the name of the United States by the United States attorney.

* * * * *

(As amended, July 29, 1970, Pub. L. 91–358, title I, § 157(d), 84 Stat. 574.)

AMENDMENT

1970—Section 157(d) of Act July 29, 1970, Public Law 91–358, amended subsection (f) by striking out "United States branch of the municipal court" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Acquittal on appeal

Court of Appeals, on reversing convictions for narcotic vagrancy, maintaining common nuisance, and possession of narcotics, for failure of evidence to show that defendants had in their possession more than trace of heroin, would not remand for new trial, where there was no showing that government had additional proof that actual amounts involved were more than mere traces that were actually usable or saleable as narcotics. *L. Marshall and K. Watkins* v. *United States* (D.C. App. 1967, 229 A. 2d 449).

Concurrent sentences

Where defendant received identical concurrent sentences in prosecution for illegal possession of narcotics and narcotics vagrancy, failure to charge scienter in narcotics vagrancy information did not require vacation of judgment on such charge, absent collateral consequences warranting vacation. *J. D. Williams* v. *United States* (D.C. App. 1970, 263 A. 2d 659).

Where defendants received concurrent sentences in prosecution for possession of narcotics, possession of implements of crime, unlawful entry and narcotics vagrancy and evidence was sufficient to support conviction of possession of narcotics and possession of implements of crime, District of Columbia Court of Appeals would not pass upon sufficiency of evidence to support other convictions. *S. Keith, R. L. Payne and T. J. Walker* v. *United States* (D.C. App. 1967, 232 A. 2d 92).

Constitutionality

Burden put upon prior narcotics offenders and narcotics users by this section, as those most likely to engage in illicit narcotics traffic, of absenting themselves from places where the narcotics are kept or used is not impermissible deprivation of freedom of movement. *United States* v. *M. C. McClough et al.* (D.C. App. 1970, 263 A. 2d 48).

This section which defines as a vagrant any unemployed narcotic user or who has been convicted as a narcotic offender without lawful and visible means of support who is found in public place and fails to give good account of himself did not enable citizens of ordinary intellect to distinguish wrong from right and was unconstitutional. *H. M. Ricks and J. N. Williams* v. *United States* (1968, 414 F. 2d 1111, 134 U.S. App. D.C. 215).

The Court is not at liberty to ignore shortcomings of statutory language, or rationalize its validity, simply on basis of methods associated with its administration. *Id.*

This section which was vague and indefinite could not be rendered constitutional by the unpublicized scope limitations which its enforcement plan espouses. *Id.*

Since under the Narcotics Vagrancy and General Vagrancy Statutes anyone using street for a lawful business in a lawful manner may do so without restriction, statutes are not an unreasonable restriction on freedom of movement in violation of due process clause of Fifth Amendment. *H. M. Ricks and J. N. Williams* v. *United States; H. M. Ricks* v. *District of Columbia* (D.C. App. 1967, 228 A. 2d 316; rev'd 414 F. 2d 1111, 134 U.S. App. D.C. 215).

Convictions for violation of Narcotics Vagrancy and General Vagrancy Statutes were not invalid on ground that defendants were being punished solely for their status as vagrants. *Id.*

Convictions of defendants for violation of Narcotics Vagrancy and General Vagrancy Statutes on proof showing defendants' associations with known narcotics users and prostitutes did not violate Eighth Amendment's prohibition against cruel and unusual punishment despite claim that there was an absence of any overt criminal act. *Id.*

Construction

Without requirement of knowledge by defendant that he is in place wherein narcotics are kept, found, used, or dispensed, this section would violate due process; but this section is construed to require knowledge on part of defendant, and, so construed, is constitutionally valid;

overruling in part Harris v. United States, D.C. Mun. App., 162 A. 2d 503. *United States* v. *M. C. McClough et al.* (D.C. App. 1970, 263 A. 2d 48).

This section was designed in large part to punish participants in narcotics traffic, and as such does not fit into class of offenses in which absolute criminal liability is imposed. *Id.*

When an individual is unable to give a good account to police when wandering at late and unusual hours and is associated with criminals or narcotics addicts and is not lawfully employed, these factors, together with others enumerated in statutes, constitute probable cause for arrest for vagrancy. *H. M. Ricks and J. N. Williams* v. *United States; H. M. Ricks* v. *District of Columbia* (D.C. App. 1967, 228 A. 2d 316; rev'd 414 F. 2d 1111, 134 U.S. App. D.C. 215).

Vagrancy statutes were not invalid on ground that they were "catch-alls" used when other crimes could not be proven or that they allegedly required a lesser quantum of proof to convict. *Id.*

Word "loitering" as used in Narcotics Vagrancy and General Vagrancy Statutes was not unconstitutionally vague, particularly where additional conditions were necessary to constitute offense. *Id.*

Reference to "failure to give a good account" as used in Narcotics Vagrancy and General Vagrancy Statutes restricts rather than enlarges application of statutes and allows suspected vagrant to dissipate probable cause by satisfactorily explaining his conduct, and the arresting officer is not the only one who must evaluate account given by person questioned. *Id.*

Narcotics Vagrancy and General Vagrancy Statutes delineate with specificity what vagrancy is, and the definitions are neither numerous nor susceptible to widely divergent interpretations. *Id.*

Custodial interrogation

Questions addressed to three defendants by arresting officers seeking an explanation for defendants' being in condemned house were noncoercive and not "custodial interrogation" within rule of Miranda v. State of Arizona. *S. Keith, R. L. Payne and T. J. Walker* v. *United States* (D.C. App. 1967, 232 A. 2d 92).

Duty to arrest

When police detectives saw narcotics paraphernalia in possession of defendants, officers were under statutory duty to arrest the offenders immediately. *S. Keith, R. L. Payne and T. J. Walker* v. *United States* (D.C. App. 1967, 232 A. 2d 92).

Elements of offense

Presence of narcotics is not essential element of common nuisance offense when addicts are shown to frequent premises for purpose of using narcotics, but there can be no conviction for maintaining place used for illegal keeping or sale of narcotics without also showing that such drugs were or had been kept on premises. *L. Marshall and K. Watkins* v. *United States* (D.C. App. 1967, 229 A. 2d 449).

Evidence—Admissibility

Where defendants' arrest for narcotics violations was legal, narcotics paraphernalia seized at time of the arrest was properly admitted in defendants' joint trial for narcotics violations. *S. Keith, R. L. Payne and T. J. Walker* v. *United States* (D.C. App. 1967, 232 A. 2d 92).

—— Sufficiency

Evidence was insufficient to support conviction for violation of Narcotics Vagrancy Statute. *N. Baker* v. *United States* (D.C. App. 1967, 228 A. 2d 323).

Government's burden of proof

To prove violation of statute making it illegal for any person to keep or maintain any place resorted to by drug addicts for purpose of using narcotic drugs or used for illegal keeping or sale of same, government must show either that addicts resort to such premises for use of narcotics or that premises are maintained or used for illegal sale, use or possession of narcotics. *L. Marshall and K. Watkins* v. *United States* (D.C. App. 1967, 229 A. 2d 449).

In absence of proof of contemporaneous use, conviction for narcotic vagrancy necessitates additional showing of presence of quantity of narcotics sufficient to be used or dispensed, not mere immeasurable trace. *Id.*

Information—Sufficiency

Information charging defendant with narcotics vagrancy is insufficient for failure to allege knowledge of presence of illicit narcotics in basement in which defendant was found. *F. L. Brooks* v. *United States* (D.C. App. 1970, 263 A. 2d 45).

Joinder

In this case, the court held the offenses of possession of narcotics and of narcotics vagrancy, largely based on same transaction, were of "similar character," such that joinder of the charges was permissible *J. D. Williams* v. *United States* (D.C. App. 1970, 263 A. 2d 659).

Knowledge

Proof of knowledge of presence of narcotics, required in prosecutions under this section, will usually take form of inference to be drawn from defendant's proximity to or connection with narcotics, and not merely from presence in one part of large building in which narcotics are found. *United States* v. *M. C. McClough et al.* (D.C. App. 1970, 263 A. 2d 48).

Charges of narcotics vagrancy violations under this section would be dismissed without prejudice, where information failed to allege knowledge on part of defendants of presence of illicit narcotics in residence in which narcotic drugs were found. *Id.*

Prior convictions

One can be found guilty of violating either Narcotics Vagrancy Statute or the General Vagrancy Statute without having been previously convicted. *H. M. Ricks and J. N. Williams* v. *United States; H. M. Ricks* v. *District of Columbia* (D.C. App. 1967, 228 A. 2d 316; rev'd 414 F. 2d 1111, 134 U.S. App. D.C. 215).

Both the Narcotics Vagrancy Statute and General Vagrancy Statute employ separate paragraphs which disjunctively set up criteria amounting to vagrancy and both require factors, other than prior convictions, which conjunctively amount to violation, so that prior convictions are not essential to all subsections of the statutes. *Id.*

Prior convictions of accused are admissible in prosecution for violation of vagrancy statutes. *Id.*

Narcotics Vagrancy and General Vagrancy Statutes do not improperly require presentation and proof of prior convictions, and do not deny due process and fair trial. *Id.*

Probable cause for arrest

Arrest for vagrancy without warrant was justified under evidence, including testimony of experienced police officers that they had observed defendant in company of known prostitutes and narcotics violators on four occasions during two nights, defendant's warrantless arrest for vagrancy was not without probable cause. *J. L. Worthy* v. *United States* (1968, 409 F. 2d 1105, 133 U.S. App. D.C. 188).

Purpose of statute

A course of conduct rather than an overt act is prohibited by the Narcotics Vagrancy and General Vagrancy Statutes. *H. M. Ricks and J. N. Williams* v. *United States; H. M. Ricks* v. *District of Columbia* (D.C. App. 1967, 228 A. 2d 316; rev'd 414 F. 2d 1111, 134 U.S. App. D.C. 215).

Purpose of Narcotics Vagrancy and General Vagrancy Statutes is to prevent crimes which may likely flow from the vagrant's mode of life. *Id.*

Search

Although it is incident to an arrest for vagrancy the search was not for that reason required to be limited to a frisk. *J. L. Worthy* v. *United States* (1968, 409 F. 2d 1105, 133 U.S. App. D.C. 188).

Sufficiency of evidence

Absence of any proof that defendants had in their possession more than trace of heroin or that such trace could be used or dispensed as narcotic required reversal of convictions for narcotic vagrancy, maintaining common nuisance, and possession of narcotics. *L. Marshall and K. Watkins* v. *United States* (D.C. App. 1967, 229 A. 2d 449).

Where there is only trace of substance, a chemical constituent not quantitatively determined because of minuteness, and there is no additional proof of its usability as narcotics, there can be no conviction under statute

making it illegal for person to maintain place resorted to by drug addicts for purpose of using narcotic drugs or used for illegal keeping or sale of same. *Id.*

§ 33–417. Forfeiture by unlawful possession—Disposition.

REFERENCES IN TEXT

Section 4733 of the Internal Revenue Code of 1954, referred to in text, was repealed by section 1101(b)(3)(A) of Pub. L. 91–513, 84 Stat. 1292. For current provisions, see the Controlled Substances Act, Pub. L. 91–513, 84 Stat. 1242 (21 U.S.C. 801 et seq.).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–711.

§ 33–421. Prosecution—Burden of proof on defendant of any exception, excuse, proviso, exemption.

NOTES TO DECISIONS

Government's burden of proof

Part of government's prima facie case in prosecution for unlawful possession of narcotics is to prove that a substance in defendant's possession is proscribed as a narcotic drug under the statutory scheme of narcotics control. *R. M. Edelin* v. *United States* (D. C. App. 1967, 227 A. 2d 395).

§ 33–422. Enforcement—Employees of Board of Pharmacy—Salaries—Cost of forms.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 33–423. Penalties.

(a) Except as hereinafter provided, a person violating any provision of this chapter, or any regulation made by the Commissioner of the District of Columbia or the District of Columbia Council under authority of this chapter, for which no specific penalty is otherwise provided, shall be fined not less than $100 nor more than $1,000, or imprisoned for not more than one year, or both.

(b) A person convicted of an offense punishable pursuant to this section, who shall have previously been convicted in the District of Columbia of such an offense, or who shall have previously been convicted, either in the District of Columbia or elsewhere, of a violation of the laws of the United States or of a State or subdivision thereof which would have been a violation of this chapter and punishable pursuant to this section if committed in the District of Columbia and prosecuted pursuant to this chapter, shall be fined not less than $500 nor more than $5,000 or imprisoned for not more than ten years, or both.

(c) For additional penalties for two or more violations of this chapter, see sections 22–104 and 22–104a. (June 20, 1938, 52 Stat. 796, ch. 532, § 23; July 24, 1956, 70 Stat. 622, ch. 676, title III, § 301(n); July 29, 1970, Pub. L. 91–358, § 208, title II, 84 Stat. 603.)

AMENDMENT

1970—Section 208 of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 5.—MEATS AND MEAT PRODUCTS

§ 33–501. Horse meat and horse meat products—Labeling or marking—Notification to consumer.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33–502, 33–503.

§ 33–502. Same—Director of public health to make regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402 (263) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33–501, 33–503.

§ 33–503. Same—Penalties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33–501, 33–502.

Chapter 7.—REGULATION AND CONTROL OF CERTAIN DRUGS OTHER THAN NARCOTICS

§ 33–701. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(264) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (1)(C) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 33–702. Prohibited acts.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 23–546, 33–704, 33–710.

NOTES TO DECISIONS

Amendment of information

Granting government's motion to amend information, after presentation of all evidence and after government had rested its case, to read "make or utter" rather than "make and utter" a forged prescription for purpose of obtaining dangerous drug did not change nature of offense or charge additional violation and constituted proper exercise of judicial discretion. *G. D. Bobrow* v. *United States* (D.C. App. 1967, 225 A. 2d 311).

Basis for search warrant

Quantitatively, the information in support of a search warrant in narcotics case must be that from which a reasonable man could conclude that there probably are illicit paraphernalia on the premises to be searched. Logically this is less evidence than that required to convict. *United States* v. *J. D. Kuch* (1969, 301 F. Supp. 965).

§ 33–703. Drugs exempted.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(265 and 266) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (1) and (2) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–702.

§ 33–704. Exemption of persons.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33–701, 33–702, 33–705.

§ 33–705. Records.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 33–702, 33–706.

§ 33–706. Inspection.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 33–702.

§ 33–707. Regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(267) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 33–709. Search warrants.

CROSS REFERENCE

Search warrants, generally, see §§ 23–521 to 23–525.

TITLE 34.—HOTELS AND LODGING-HOUSES

Chapter 1.—RIGHTS AND LIABILITIES

Sec.

34–101 to 34–105. Repealed.
34–106. Hotels, motels, and innkeepers furnishing depository or checkroom and giving notice to guests—Limitation on liability for loss or damage to property—Exceptions.
34–107. Lien of hotels, motels, and innkeepers—Retention of property of guest or patron—Satisfaction of lien by public sale—Notice—Application of proceeds.
34–108. Sale by hotels, motels, and innkeepers of unclaimed property—Notice—Application of proceeds.

§ 34–101. Repealed. Dec. 8, 1970, Pub. L. 91–537, § 4(b), 84 Stat. 1397.

Section, act Dec. 21, 1920, 41 Stat. 1081, ch. 2, § 1, limited the liability of hotel proprietors and innkeepers for injury or loss to guests' property when a safe or vault was furnished and notice given. For current provisions, see § 34–106.

NOTES TO DECISIONS

"Guest" defined

Hotel patron who had stated to hotel desk clerk in the morning that she was checking out but would leave her belongings in the room until 3:00 P.M. until checkout time and was told that this was permissible and who discovered at about 2:30 P.M. that her fur coat was missing from the room was a "guest" of the hotel at the time of the loss, and the common-law doctrine of infra hospitium was applicable. *Hotel Corporation of America* v. *The Travelers Indemnity Company* (D.C. App. 1967, 229 A. 2d 158).

§ 34–102. Repealed. Dec. 8, 1970, Pub. L. 91–537, § 4(b), 84 Stat. 1397.

Section, act Dec. 21, 1920, 41 Stat. 1082, ch. 2, § 2, limited the liability of hotel proprietors and innkeepers for baggage stolen from rooms when certain notice was posted on inside or door. For current provisions, see § 34–106.

§§ 34–103 to 34–105. Repealed. Dec. 8, 1970, Pub. L. 91–537, § 4(a), 84 Stat. 1397.

Sections, act Mar. 3, 1901, 31 Stat. 1388, ch. 854, §§ 1261, 1263, 1264, provided for lien of boarding-house and innkeepers, and for enforcement of lien by sale and by bill in equity. For current provisions, see § 34–107.

§ 34–106. Hotels, motels, and innkeepers furnishing depository or checkroom and giving notice to guests—Limitation on liability for loss or damage to property—Exceptions.

(a) If a hotel, motel, or similar establishment in the District of Columbia which provides lodging to transient guests (1) provides a suitable depository (other than a checkroom) for the safekeeping of personal property (other than a motor vehicle), and (2) displays conspicuously in the guest and public rooms of that establishment a printed copy of this section (or summary thereof), that establishment shall not be liable for the loss or destruction of, or damage to, any personal property of a guest or patron not deposited for safekeeping, except that this sentence shall not apply with respect to the liability of that establishment for loss or destruction of, or damage to, any personal property retained by a guest in his room if the property is such property as is usual, common, or prudent for a guest to retain in his room. In the case of any personal property of a guest or patron deposited in such a depository for safekeeping, that establishment shall be liable for the loss or destruction of, or damage to, that property to the extent of the lesser of $1,000 or the fair market value of the property at the time of its loss, destruction, or damage.

(b) If a hotel, motel, or similar establishment in the District of Columbia which provides lodging to transient guests maintains a checkroom (conspicuously designated as such) where guests and patrons may deposit personal property, that establishment shall, if it conspicuously posts a printed copy of this section (or summary thereof), be liable for the loss or destruction of, or damage to, that property only to the extent of the lesser of $200 or the fair market value of the property at the time of its loss, destruction, or damage unless the destruction or damage is caused by its agent or servant. (Dec. 8, 1970, Pub. L. 91–537, § 1, 84 Stat. 1395.)

CROSS REFERENCES

Defrauding hotel, see § 22–1301.
Embezzlement by proprietor, see § 22–1205.
License fee, hotels, see § 47–2328.
License fee, lodging-houses, see § 47–2330.

§ 34–107. Lien of hotels, motels, and innkeepers—Retention of property of guest or patron—Satisfaction of lien by public sale—Notice—Application of proceeds.

(a) A hotel, motel, or similar establishment in the District of Columbia which provides lodging to transient guests, has a lien upon, and may retain possession of, any personal property belonging to, or under the control of, a guest or patron of that establishment, for the amount due that establishment from that guest or patron for lodging, food, or other item of value, except that the amount of the lien authorized by this subsection may not exceed $1,000.

(b) If, within 30 days after his property has been retained under subsection (a), a guest or patron fails to pay the establishment retaining that property any amount due that establishment for lodging, food, or other item of value, that establishment may sell that property at a public sale. Prior to that sale, the establishment shall send, by registered or certified mail, to the last known address of that guest or patron a demand for payment of the amount due, and shall publish a notice of sale once a week for three successive weeks in a daily newspaper of general circulation published in the District of Columbia. That notice shall state—

(1) that the purpose of the sale is to satisfy the lien granted by subsection (a);

(2) the amount for which that lien is granted, including storage charges;

(3) the day, time, and place of sale; and

(4) a description of the property including, in the case of the sale of a motor vehicle, the make, type, year, model number, serial number, engine number, and the year and license registration number of that motor vehicle.

In the case of the sale of a motor vehicle, a notice shall be given to any person whose security interest, lien, or other claim upon that motor vehicle is recorded with the motor vehicle registry of the State (including the District of Columbia) of registration of that motor vehicle. That notice shall be given at least 15 days prior to the date of sale.

(c) The proceeds of a sale of property made under subsection (b) shall be applied as follows:

(1) first, to cover the expenses of the storage and sale of the property, and

(2) second, to discharge any security interest, lien, or other claim upon the property in the order of priority provided for by law.

Any amount remaining after the application provided for by paragraphs (1) and (2) shall be paid to the party entitled to the remainder if that party is known and can be located. If that party is not known or cannot be located within one year after the date of the sale, the establishment shall pay, within a reasonable time, the remainder to the government of the District of Columbia. (Dec. 8, 1970, Pub. L. 91–537, § 2, 84 Stat. 1395.)

CROSS REFERENCE

Fraudulent representations to obtain accommodations, fraudulent removal of baggage, criminal penalty, see § 22–1301.

§ 34–108. Sale by hotels, motels, and innkeepers of unclaimed property—Notice—Application of proceeds.

(a) A hotel, motel, or similar establishment in the District of Columbia which provides lodging to transient guests may sell at public auction any personal property that has been deposited for safekeeping, checked, or left unclaimed at that establishment for more than 90 days. If the owner of that property is known, the establishment shall, at least 15 days before that sale is held, send, by registered or certified mail, a notice to the owner at his last known address stating—

(1) that the purpose of the sale is to dispose of unclaimed property;

(2) the amount of storage and other charges (including interest on those charges) against that property;

(3) the day, time, and place of sale; and

(4) a description of the property including, in the case of the sale of a motor vehicle, the make, type, year, model number, serial number, engine number, and the year and license registration number of that motor vehicle.

In the case of the sale of a motor vehicle, a notice shall be given to any person whose security interest, lien, or other claim upon that motor vehicle is recorded with the motor vehicle registry of the State (including the District of Columbia) of registration of that motor vehicle. That notice shall be given at least 15 days prior to the date of sale.

(b) The proceeds of a sale of property made under subsection (a) shall be applied as follows:

(1) first, to cover the expenses of the storage and sale of the property (including interest on those charges), and

(2) second, to discharge any security interest, lien, or other claim upon the property in the order of priority provided for by law.

Any amount remaining after the application provided for by paragraphs (1) and (2) shall be paid to the party entitled to the remainder if that party is known and can be located. If that party is not known or cannot be located within one year after the date of the sale, the establishment shall pay, within a reasonable time, the remainder to the government of the District of Columbia. (Dec. 8, 1970, Pub. L. 91–537, § 3, 84 Stat. 1396.)

TITLE 35.—INSURANCE

Chap. Sec.
17. Insurance Placement 35–1701

Chapter 1.—INSURANCE DEPARTMENT—GENERAL PROVISIONS

§ 35–101. Department of Insurance created—Superintendent of Insurance—Subject to supervision of Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–902, 35–1202.

§ 35–102. Duties of Superintendent—Copy of charters to be filed—Foreign companies to file power of attorney—Service of process—Superintendent to make rules and regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(268) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–201, 35–1202.

§ 35–103. Annual statements—Statement to be published in newspaper.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29–105, 35–1202.

§§ 35–104, 35–105.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 35–1202.

§ 35–106. Superintendent to make annual report.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1202.

§§ 35–107, 35–108.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 35–1202.

Chapter 2.—PROVISIONS APPLICABLE TO MORE THAN ONE KIND OF INSURANCE

SUBCHAPTER I.—GENERAL PROVISIONS

§ 35–201. Life and fire insurance companies to maintain reinsurance reserves—Suspension of license upon impairment of capital stock—Penalty for acting for unlicensed company—Superintendent may make examination to determine impairment in capital, or insolvency.

All life and fire insurance companies or associations licensed to do business in said District shall be required to maintain a reinsurance reserve fund; and whenever any such company or association not excepted from the operations hereof shall become insolvent or impaired to the extent of twenty-five per centum of its capital stock it shall be the duty of the superintendent to suspend its license; and unless such impairment or insolvency shall be made good within sixty days thereafter, it shall be the duty of the Superintendent of Insurance to revoke its license to do business in the District; and it shall be unlawful for any insurance company, association, or order to do business in the District without a license, or to continue business after the revocation of its license, and any such company or association violating this provision shall be liable to a penalty of twenty dollars for each day it transacts business without such license, to be recovered by the commissioners of the District by an action of debt in any court of the District of competent jurisdiction. And any person who shall aid in carrying on the business of any such company, or shall act as agent or solicitor for any company not licensed to do business in said District, or whose license is revoked, shall be guilty of a misdemeanor, and on conviction thereof in the Superior Court of the District of Columbia shall be punished by a fine not exceeding one hundred dollars, or, in default of payment thereof, by imprisonment in the jail of the District for not less than ten nor more than sixty days. And the Superintendent of Insurance shall issue such license to any such insurance company or association whenever it shall have complied with the provisions of section 35–102, subject, however, to the provisions of sections 35–1201, 35–1202: *Provided,* That the Superintendent of Insurance shall have power to make an official examination into the affairs of any insurance company or association organized under the laws of the District of Columbia, or having its principal office therein, at his discretion, for the purpose of ascertaining whether such company is impaired or insolvent, as aforesaid. (Mar. 3, 1901, 31 Stat. 1290, ch. 854, § 648; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

CODIFICATION

This section as enacted contains the following at the beginning: "No fire insurance company, except mutual fire insurance companies organized in the District of Columbia under special act of Congress or the general laws of said District, or mutual companies of other States licensed to do business in the said District, which has a paid-up capital of less than one hundred thousand dollars, shall be permitted to do business therein, and." Sections 35–1103 and 35–1316, provide for the paid-in capital stock of fire insurance companies.

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1201, 35–1202.

§ 35–202. Health, accident, and life insurance companies defined—Assets and capital stock required—Amount of policies—Taxation—Reports to Superintendent of Insurance—Examination by Superintendent of Insurance—Appeal to Commissioners—Fraternal beneficial and certain other organizations exempt.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(269) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to prescribing rules and regulations for the hearing of appeals, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1103, 35–1202.

§ 35–203. Copy of application to be delivered with policy—Statements in application as defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1002, 35–1202.

§ 35–204. Principal office to be in District of Columbia—Keeping and removing of records—Reincorporation of companies chartered by special acts—Penalties—Prosecutions.

* * * * *

Any officer, agent, or employee of any such corporation who shall violate any of the provisions of this section shall be guilty of a misdemeanor and upon conviction shall pay a fine of not less than $300 or be imprisoned for not more than ninety days, or by both such fine and imprisonment. All prosecutions under this section shall be upon information filed in the Superior Court of the District of Columbia in the name of the District of Columbia by the corporation counsel thereof or any of his assistants. (As amended July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Pub. L. 91–358, struck out "District of Columbia Court of General Sessions" and inserted in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding § 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1202.

§ 35–205. Compensation insurance regulations—Facts to be filed with Superintendent of Insurance—Approval required—Withdrawal of approval—Petition for review—Time for filing.

Every insurance corporation or association authorized to transact business in the District of Columbia, which insures employers against liability for compensation under the Employees' Compensation Act, shall file with the Superintendent of Insurance its manual of classifications and underwriting rules, together with basic rates for each class, and also merit rating plans designed to modify the class rates, none of which shall take effect until the Superintendent of Insurance shall have approved the same as adequate and reasonable for the group of risks to which they respectively apply. The Superintendent of Insurance may withdraw his approval of any premium rate or schedule made by any insurance corporation or association, if, in his judgment, such premium rate or schedule is inadequate or unreasonable: *Provided,* That upon petition of the company or association or any other party aggrieved the opinion of the Superintendent of Insurance shall be subject to review by the Superior Court of the District of Columbia: *Provided further,* That any petition for review shall be filed with said court within thirty days after the rendition of opinion by the Superintendent of Insurance. (April 16, 1934, 48 Stat. 592, ch. 144; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(36), 84 Stat. 572.)

REFERENCE IN TEXT

Employees' Compensation Act, referred to in the text, see note to § 1–311 in main edition and this supplement.

AMENDMENT

1970—Section 155(c)(36) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1202, 35–1611.

SUBCHAPTER II.—DOMESTIC STOCK INSURANCE COMPANIES

§ 35–222. Rules and regulations—Revocation or suspension of certificate—Notice and hearing—Penalties—Exemption of certain companies.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(418) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) with respect to promulgating rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 35–223. Registration requirements of beneficial owners, directors, etc.—Sales restriction—Definition—Exemption — Rules and regulations — Penalty — Effective date of section.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(419 to 421) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in the particulars described in Pars. 419 to 421, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 35–224. Preservation of Commissioners' authority—Delegation of functions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 3.—LIFE INSURANCE—DEFINITIONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 35–301, 35–302, 35–405, 35–412, 35–415 to 35–418, 35–426, 35–428, 35–431, 35–503, 35–508, 35–511, 35–513, 35–518 to 35–523, 35–528, 35–529, 35–534, 35–540, 35–601, 35–602, 35–709, 35–719, 35–801 to 35–803.

§ 35–302. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 4.—DEPARTMENT OF INSURANCE WITH RESPECT TO LIFE COMPANIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 35–301, 35–302, 35–405, 35–412, 35–415 to 35–417, 35–426, 35–428, 35–431, 35–503, 35–508, 35–511, 35–513, 35–518 to 35–523, 35–528, 35–529, 35–534, 35–540, 35–601, 35–602, 35–709, 35–719, 35–801 to 35–803.

§ 35–401. Insurance department—Superintendent of Insurance—Oath—Bond—Assistants—Seal — Sealed instruments as evidence—Annual report—Attendance at conventions—Visits—Expenses.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 35–403. Refunds of excess in fees, charges, or taxes.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 35–407. Annual statement—Verification—Failure to make.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(270) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to publication in a daily newspaper, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–419, 35–541.

§ 35–409. Deceptive statements prohibited.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–410.

§ 35–410. Contents of advertisements of alien companies—Penalty for violation.

Every advertisement or public announcement and every sign, circular, or card issued by an alien company doing business in the District, representing its financial standing shall exhibit as capital stock and assets only the capital stock and assets held by its United States branch, the liabilities, including therein the premium and loss reserves required by law, and the amount of surplus, and shall correspond to the next preceding verified statement made by such company to the superintendent: *Provided, however,* That this section shall not be deemed to prevent an alien company from furnishing to its policyholders in the District of Columbia its annual report to policyholders of its domicile. This paragraph shall not apply to an alien company which maintains in the United States as required by law, assets held in trust for the benefit of the United States policyholders in an amount not less than the sum of its required capital deposit and the amount of its outstanding liabilities arising out of its insurance transactions in the United States.

Any violation of this section or section 35–409 shall be a misdemeanor, and any person convicted of such violation shall, for the first offense, be liable to a fine of not more than $500, and for each subsequent offense shall be liable to a fine of not more than $1,000. (June 19, 1934, 48 Stat. 1132, ch. 672, Ch. II, § 11; Dec. 5, 1963, 77 Stat. 347, Pub. L. 88–193, § 2; Sept. 7, 1966, 80 Stat. 705, Pub. L. 89–559, § 1; Aug. 8, 1968, Pub. L. 90–467, § 1, 82 Stat. 662.)

AMENDMENT

1968—Act Aug. 8, 1968, Pub. L. 90–467, amended the first paragraph adding thereto the last sentence above set out beginning with the words "This paragraph shall not apply to an alien company etc.,".

§ 35–412. Superintendent to have power to issue subpoenas—Enforcement.

In the examination of any company as provided for in chapters 3–8 of this title the superintendent shall have power to issue subpoenas in the name of the Chief Judge of the Superior Court of the District of Columbia to compel witnesses to appear and testify and/or to produce all books, records, papers, or documents before said superintendent.

If any witness having been personally summoned shall neglect or refuse to obey the subpena issued as herein provided, then and in that event the superintendent may report that fact to the Superior Court of the District of Columbia, or one of the judges thereof, and said court, or any judge thereof, hereby is empowered to compel obedience to said subpena to the same extent as witnesses may be compelled to obey the subpenas of that court. (June 19, 1934, 48 Stat. 1133, ch. 672, Ch. II, § 13; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(37)(A), 84 Stat. 572.)

AMENDMENT

1970—Section 155(c)(37)(A) of Act July 20, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 35–414. False statements in application for insurance.

NOTES TO DECISIONS

Material misrepresentation

A misstatement in an application for an insurance policy, to be material to the hazard assumed, must be shown in some way to have affected it or contributed to the loss, and in a substantial manner. *L. Haubner a/k/a etc.* v. *Aetna Life Insurance Co.* (D.C. App. 1969, 256 A. 2d 414).

The court held that it is clear that the facts suppressed by the life insurance applicant concerning her consultations with and examinations by physicians prior to time she applied for policy and her previous history of cancer affected in a substantial manner the hazard assumed by insurer and would certainly have influenced insurer's decision to insure her, and such false statements by insured were material to issuance of the policy. *Id.*

Insured's failure to reveal information to the life insurer that she was consulting with physicians at time of policy application and that she had previous history of cancer constituted sufficient cause to justify insurer's refusal to pay proceeds of policy. *Id.*

Waiver of misrepresentation

Even if life insurer's doctor knew or should have known that tumor causing removal of breast in 1953 was malignant and that recurrence of malignancy in the future was a definite possibility, this did not operate as a waiver by the insurer of a defense based on false statements allegedly contained in an application for life insurance policy, where applicant concealed information, concerning present consultations, that was clearly material to issuance of life insurance policy. *L. Haubner a/k/a etc.* v. *Aetna Life Insurance Co.* (D.C. App. 1969, 256 A. 2d 414).

§ 35–416. Custody of general deposits—Collection of income—Substitution of securities—Required securities.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–415.

§ 35–419. Superintendent may take possession of property of company and conduct its business—Conditions precedent — Procedure — Injunction — Resumption of possession by company—Order for liquidation—Appointment of deputies—Expense of liquidation—Bond—Annual report.

The superintendent may, the corporation counsel of the District representing him, apply to the court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000 for a rule directing any company doing business in the District, any company organized under the laws of the District or other Acts of Congress, or any company in course of organization, to show cause why the superintendent should not take possession of its property and conduct its business and for such other relief as the nature of the case and the interests of its policyholders, creditors, stockholders, or the public may require, whenever any such company (a) is insolvent; or (b) in the case of a stock company, has neglected or refused to observe a lawful order of the superintendent to make good within the time prescribed by law any deficiency of its capital or surplus, or in the case of a mutual company, if its assets have not become equal to its liabilities within ninety days from the date of notification thereof by the superintendent; or (c) has by contract or reinsurance, or otherwise transferred or attempted to transfer substantially its entire property or business, or entered into any transaction the effect of which is to merge substantially its entire property or business, in the property or business of any other company, association, society, or order, without having first obtained the written approval of the superintendent; or (d) is found, after an examination by the superintendent, his deputy or examiners, to be in such condition that its further transaction of business will be hazardous to its policyholders; or (e) has willfully violated its charter; or (f) is carrying on activities against public policy.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, § 168(f), title I, 84 Stat. 589.)

AMENDMENT

1970—Section 168(f) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(271) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to making and prescribing rules and regulations, as provided in the penultimate par. of the section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 35–423. Superintendent as attorney for service of process—Superintendent to mail process to company—Acceptance of certificate is appointment—Failure—Penalty.

* * * * *

Failure of any such company to file such instrument, or failure on the part of any such company to authorize such filing, shall not invalidate any service made by serving the superintendent. By accepting a certificate of authority to transact business in the District, every such company shall be held to have appointed the superintendent its true and lawful attorney. Any such insurance company transacting business or soliciting, selling, or writing insurance on any resident of the District without designating an attorney for service of process, incident to adjustment of claims and kindred matters, shall, upon complaint filed by the superintendent in the Superior Court of the District of Columbia, be fined, upon conviction of violating any provision of this section, not to exceed $200 a day for such violation. (As amended July 29, 1970, Pub. L. 91–358, title I, § 155(c)(37)(B), 84 Stat. 572.)

AMENDMENT

1970—Section 155(c) (37) (B) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 35–425. General agent, agent, solicitor—License required—Application—Contents—Applicant vouched for by company—Placement of excess or rejected risks—Expiration and renewal of license—Officers and traveling salaried employees excepted—Notice of termination of employment—Information privileged.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(272) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in the particulars specified in par. 272, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1336, 47–1591.

§ 35–426. Suspension or revocation of license—Grounds for—Hearing—Penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1611.

§ 35–427. Appeal from rulings of superintendent—Procedure — Costs and supersedeas bond — Liability of superintendent.

Within thirty days after the revocation or suspension of license or the refusal of the superintendent to grant a license, the general agent, agent, solicitor, or broker or applicant aggrieved may appeal as provided by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510).

In all said proceedings and appeals said superintendent shall not be taxed with any costs, nor shall he be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said superintendent shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any person on any appeal taken by said superintendent in any case, nor shall said superintendent be required in any case to make any deposit for costs or pay for any service to the clerks of any court or to any marshal of the United States. (June 19, 1934, 48 Stat. 1140, ch. 672, Ch. II, § 28; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127. July 29, 1970, Pub. L. 91–358, § 163(c), title I, 84 Stat. 583.)

AMENDMENT

1970—Section 163(c) of Act July 29, 1970, Public Law 91–358 amended section by striking out "from the ruling of the superintendent to the United States District Court for the District of Columbia, in equity" and all that follows in the first paragraph and inserting in lieu thereof "as provided by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510)."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–712 to 35–714, 35–426, 35–428.

§ 35–428. Brokers—License—Application—Contents—Person vouched for—Examination—Issuance—Effect of revocation—Appeal from refusal to issue—Renewal annually—Penalty for violation.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(273) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in the particulars specified in par. 273, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 35–432. Appeal from superintendent to Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 5.—DOMESTIC LIFE COMPANIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 35–301, 35–302, 35–405, 35–412, 35–415, 35–417, 35–426, 35–428, 35–431, 35–503, 35–508, 35–511, 35–513, 35–518 to 35–523, 35–528, 35–529, 35–534, 35–540, 35–601, 35–602, 35–709, 35–719, 35–801 to 35–803.

§ 35–515. Capital stock records—Contents—To be kept open—Contents as evidence—Penalty for neglect to make entry or to exhibit.

* * * * *

Every company that shall neglect to have such record kept open for inspection, as herein provided, shall forfeit to the District the sum of $50 for every day it shall so neglect, to be sued for and recovered by the Superintendent, the Corporation Counsel representing him, in the Superior Court of the District of Columbia. (As amended July 29, 1970, Pub. L. 91–358, title I, § 155(c) (37) (C), 84 Stat. 572.)

AMENDMENT

1970—Section 155(c) (37) (C) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 35–519. Conversion of a stock life company into a mutual life company—Plan for acquisition of capital stock—Conditions.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(274) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to prescribing rules and regulations governing inspectors of elections, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 35–526. Liability of directors—Objections to be filed.

NOTES TO DECISIONS

Claim for "ultra vires" act as part of derivative action

An alleged cause of action charging that the president and director of a corporation is personally liable for participating in "ultra vires" act to the detriment of the

corporation and for being pecuniarily interested in corporate transactions in violation of statute should be maintainable as part of a derivative action. *G. E. Johnson et al.* v. *American General Insurance Company et al.* (1969, 296 F. Supp. 802).

§ 35–530. Officers and directors not to be pecuniarily interested in transactions—Appraisement—Loans on policies.

NOTES TO DECISIONS

Claim for "ultra vires" act as part of derivative action

An alleged cause of action charging that the president and director of a corporation is personally liable for participating in "ultra vires" act to the detriment of the corporation and for being pecuniarily interested in corporate transactions in violation of statute should be maintainable as part of a derivative action. *G. E. Johnson et al.* v. *American General Insurance Company et al.* (1969, 296 F. Supp. 802).

Construction

District of Columbia statute providing that a director or officer of an insurance company doing business in the district shall not receive any money or valuable thing for negotiating any loan from the company or be pecuniarily interested in any such loan is regulatory and is intended to secure fiduciary relationship from being utilized in a manner which might give rise to conflict of interest and is not intended to punish one who violates the statute, hence the rule of strict construction of criminal statute is to be relaxed. *A. F. Jordan* v. *Acacia Mutual Life Insurance Co., et ano.* (1969, 409 F. 2d 1141, 133 U.S. App. D.C. 224; rev'g 283 F. Supp. 766).

Inasmuch as statute prohibiting director or officer of life insurer from obtaining loan from insurer provided that any person violating statute should be guilty of misdemeanor, statute must be treated as a penal statute *Acacia Mutual Life Insurance Co., et ano.* v. *A. F Jordan Sup't etc.* (1968, 283 F. Supp. 766; rev'd and remanded 409 F. 2d 1141).

Portion of section of District of Columbia Code to effect that no director or officer of any life insurer doing business in district shall receive any money or valuable thing for negotiating, procuring, recommending or aiding in any loan from such insurer was intended to bar director or officer from receiving any compensation, such as broker's commission, for procuring a loan to be made and to prevent director or officer from borrowing any money from insurer while he was director or officer. *Id.*

Eligibility of borrower to become director or officer

Under District of Columbia statute providing that a director or officer of any insurance company doing business in the district shall not receive any money or valuable thing for negotiating any loan from the company or be pecuniarily interested in any such loan, a person who is interested as principal in a loan from the insurance company is barred from becoming a director even though his interest in the loan arose prior to his becoming a director. *A. F. Jordan* v. *Acacia Mutual Life Insurance Co., et ano.* (1969, 409 F. 2d 1141, 133 U.S. App. D.C. 224; rev'g 283 F. Supp. 766).

Person who had borrowed money from District of Columbia insurance company was eligible to become member of board of directors or officer of company while loan was outstanding. *Acacia Mutual Life Insurance Co., et ano.* v. *A. F. Jordan Sup't etc.* (1968, 283 F. Supp. 766; rev'd and remanded 409 F. 2d 1141).

Section of District of Columbia Code banning director or officer of any insurer from being pecuniarily interested, either as principal, coprincipal, agent or beneficiary in any purchase by, or sale to, insurer or any loan from insurer relates to transaction of lending money and does not apply to status of loan and is not effective during entire period when loan is in existence. *Id.*

§ 35–535. Investment of funds of domestic companies.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–510, 35–541.

§ 35–540. Unlawful acquisition by company of its own capital stock.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–535.

§ 35–541. Variable contracts—Separate accounts—Assets of accounts to equal obligations for variable payments—Issuance by foreign companies—Standards of qualification—Reports—Regulations—Investment limitations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(275) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (f) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 6.—FOREIGN AND ALIEN LIFE COMPANIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 35–301, 35–302, 35–405, 35–412, 35–415, 35–417, 35–426, 35–428, 35–431, 35–503, 35–508, 35–511, 35–513, 35–518 to 35–523, 35–528, 35–529, 35–534, 35–540, 35–601, 35–602, 35–709, 35–719, 35–801 to 35–803.

Chapter 7.—PROVISIONS RELATING TO ALL LIFE INSURANCE COMPANIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 35–301, 35–302, 35–405, 35–412, 35–415 to 35–417, 35–426, 35–428, 35–431, 35–503, 35–508, 35–511, 35–513, 35–518 to 35–523, 35–528, 35–529, 35–534, 35–540, 35–601, 35–602, 35–709, 35–719, 35–801 to 35–803.

§ 35–701. Superintendent to value policies — Legal standard of valuation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–519, 35–721.

§ 35–703. Standard provisions required in life insurance policies.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–705a, 35–705c.

§ 35–705a. Nonforfeiture benefits and cash surrender values.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–703, 35–723.

§ 35–705b. Standard nonforfeiture law.

* * * * *

(e) Any cash surrender value and any paid-up nonforfeiture benefit, available under any such policy in the event of default in the payment of any premium due at any time other than on the policy anniversary, shall be calculated with allowance for the lapse of time and the payment of fractional premiums beyond the last preceding policy anniversary. All values referred to in subsections (b), (c), and (d) may be calculated upon the assumption that any death benefit is payable at the end of the policy or contract year of death. The net value of any paid-up additions, other than paid-up

term additions, shall be not less than the dividends used to provide such additions. Notwithstanding the provisions of subsection (b), additional benefits payable (i) in the event of death or dismemberment by accident or accidental means, (ii) in the event of total and permanent disability, (iii) as reversionary annuity or deferred reversionary annuity benefits, (iv) as term insurance benefits provided by a rider or supplemental policy provision to which, if issued as a separate policy, this section would not apply, (v) as term insurance on the life of a child or on the lives of children provided in a policy on the life of a parent of the child, if such term insurance expires before the child's age is twenty-six, is uniform in amount after the child's age is one, and has not become paid up by reason of the death of a parent of the child, and (vi) as other policy benefits additional to life insurance and endowment benefits and premiums for all such additional benefits, shall be disregarded in ascertaining cash surrender values and nonforfeiture benefits required by this section, and no such additional benefits shall be required to be included in any paid-up nonforfeiture benefits.

* * * * *

(June 19, 1934, ch. 672, ch. V, § 5b, as added Feb. 19, 1948, 62 Stat. 30, ch. 66, § 4, and amended June 27, 1960, 74 Stat. 228, Pub. L. 86–530, § 2; Oct. 3, 1962, 76 Stat. 712, Pub. L. 87–738, § 2.)

CODIFICATION

Subsection (e) of this section is set out in this supplement to correct a typographical error in clause (v) thereof, as it appears in the main volume.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–701, 35–703, 35–705a, 35–705c, 35–723.

§ 35–705c. Loan provisions in policies.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–703.

§ 35–710. Group life insurance.

(1) * * *

* * * * *

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. No policy may be issued which provides term insurance on any employee which together with any other term insurance under any group life-insurance policy or policies issued to the employers or any of them or to the trustees of a fund established in whole or in part by the employers or any of them exceeds $20,000 unless 150 per centum of the annual compensation of a covered employee, exceeds $20,000, in which event all such insurance shall not exceed $40,000, or 150 per centum of such annual compensation, whichever is less.

* * * * *

(June 19, 1934, 48 Stat. 1164, ch. 672, ch. V, § 10; July 2, 1940, 54 Stat. 726, ch. 518; July 12, 1950, 64 Stat. 330, ch. 457, § 1; July 5, 1960, 74 Stat. 315, 316, Pub. L. 86–579, §§ 1–5; Sept. 14, 1961, 75 Stat. 519, Pub. L. 87–249, § 1; Oct. 23, 1962, 76 Stat. 1131, Pub. L. 87–855, §§ 1, 2; Sept. 20, 1966, 80 Stat. 821, Pub. L. 89–594, § 1.)

CODIFICATION

Paragraph (1)(d) of this section is set out in this supplement to correct a typographical error therein, as it appears in the main volume.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–711, 35–1604.

§ 35–711. Standard provisions for policies of group life insurance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–710.

§ 35–712. Individual Accident and Sickness Policy Provisions.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(276) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections 3(f) and the proviso in 8, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1332.

Chapter 8.—LIFE INSURANCE—PENALTIES—TESTIMONY—SEPARABILITY

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 35–301, 35–302, 35–405, 35–412, 35–415, 35–417, 35–426, 35–428, 35–431, 35–503, 35–508, 35–511, 35–513, 35–518 to 35–523, 35–528, 35–529, 35–534, 35–540, 35–601, 35–602, 35–709, 35–719, 35–801, 35–803.

§ 35–802. Repealed. Oct. 15, 1970, Pub. L. 91–452, title II, § 254, 84 Stat. 931.

EFFECT DATE OF REPEAL

See sec. 260 of act Oct. 15, 1970, Pub. L. 91–452, set out as a note to § 23–545.

Chapter 9.—FRATERNAL BENEFIT ASSOCIATIONS

§ 35–901. Definition — When disability payable — Reserves — To whom benefits payable — Exemption from general insurance laws.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–202, 35–902, 35–903, 35–906 to 35–911, 35–913 to 35–917, 35–1202.

§ 35–902. Existing associations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–202, 35–901, 35–903, 35–906 to 35–909, 35–911, 35–913 to 35–917, 35–1202.

§ 35–903. Nonresident associations—Conditions precedent to doing business in District—Right of superintendent to examine.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–202, 35–901, 35–902, 35–906 to 35–909, 35–911, 35–913 to 35–917, 35–1202.

§§ 35–904, 35–905.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 35–202, 35–901 to 35–903, 35–906 to 35–909, 35–911, 35–913 to 35–917, 35–1202.

§ 35–906. Permit to do business from Superintendent of Insurance—Fee.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–202, 35–901 to 35–903, 35–907 to 35–909, 35–911, 35–913 to 35–917, 35–1202.

§ 35–907. Organization—Procedure—Certificate of declaration—Recording—Corporate powers—Trustees, directors, or managers—Election—Quorum.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–202, 35–901 to 35–903, 35–906, 35–908, 35–909, 35–911, 35–913 to 35–917, 35–1202.

§ 35–908. Reincorporation of associations existing prior to January 1, 1902.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–202, 35–901 to 35–903, 35–906, 35–907, 35–909, 35–911, 35–913 to 35–917, 35–1202.

§ 35–909. Incorporation of subordinate bodies—Procedure.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–202, 35–901 to 35–903, 35–906 to 35–908, 35–911, 35–913 to 35–917, 35–1202.

§ 35–910. Contract invalid if beneficiary to pay assessments.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–202, 35–901 to 35–903, 35–906 to 35–909, 35–911, 35–913 to 35–917, 35–1202.

§ 35–911. Benefits exempt from attachment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–202, 35–901 to 35–903, 35–906 to 35–909, 35–913 to 35–917, 35–1202.

§ 35–912. Meetings.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–202, 35–901 to 35–903, 35–906 to 35–909, 35–911, 35–913 to 35–917, 35–1202.

§ 35–913. Fraudulent representations—Penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–202, 35–901 to 35–903, 35–906 to 35–909, 35–911, 35–914 to 35–917, 35–1202.

§ 35–914. Neglect to report—Effect—Injunction—Penalty for violating injunction.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–202, 35–901 to 35–903, 35–906 to 35–909, 35–911, 35–913, 35–915 to 35–917, 35–1202.

§ 35–915. Acting without authority—Misdemeanor—"Transact business"—"Doing business" defined.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–202, 35–901 to 35–903, 35–906 to 35–909, 35–911, 35–913, 35–914, 35–916, 35–917, 35–1202.

§ 35–916. Associations for profit.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–202, 35–901 to 35–903, 35–906 to 35–909, 35–911, 35–913 to 35–915, 35–917, 35–1202.

§ 35–917. Associations or individuals using name of previously existing corporation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–202, 35–901 to 35–903, 35–906 to 35–909, 35–911, 35–913 to 35–916, 35–1202.

JUVENILE FRATERNAL ACT

§ 35–918. Fraternal benefit society may issue insurance and annuities upon lives of children—Branches for children.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–921.

§ 35–919. Contributions—How computed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–920, 35–921.

§ 35–920. Reserves.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–921.

SEPARATION OF INSURANCE AND FRATERNAL ACTIVITIES

§ 35–922. Separation of insurance and fraternal activities authorized.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–923, 35–924, 35–926, 35–927.

§ 35–923. Certificate to be filed with Superintendent of Insurance—Contents.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–922, 35–924. 35–926, 35–927.

§ 35–924. Approval and certificate of Superintendent—Recordation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–922, 35–923, 35–926, 35–927.

§ 35–925. Division of activities and property—Directors of insurance activities—Number and selection—Policies as evidence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–922 to 35–924, 35–926, 35–927.

§ 35–926. Original corporation not dissolved—Subject to supervision as mutual legal reserve life insurance corporation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–922 to 35–924, 35–927.

§ 35–927. Contracts not impaired—Right of repeal and amendment reserved.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–922 to 35–924, 35–926.

§ 35–928. Insurance laws of States and District applicable.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–922 to 35–924, 35–926, 35–927.

Chapter 11.—MARINE INSURANCE

§ 35–1101. Conditions of policies.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1102, 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1132, 47–1806.

§ 35–1002. Validity of policy—Good faith of insured material element—Unsound health as defense.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121, 35–1122, 35–1124, 35–1128, 35–1129 to 35–1132, 47–1806.

§ 35–1103. Incontestability of policy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101, 35–1102, 35–1104 to 35–1106, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1132, 47–1806.

§ 35–1104. Assignment of policy.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1132, 47–1806.

§ 35–1105. Beneficiary.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1132, 47–1806.

§§ 35–1106, 35–1107.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 35–1101, to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1132, 47–1806.

§ 35–1108. Taxes—Underwriting profits—Computation of premiums earned on marine insurance contracts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1109 to 35–1111, 35–1114 to 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1132, 47–1806.

§ 35–1109. Statement for taxation purposes—Computation of tax by Superintendent of Insurance—Statement of taxes to be mailed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1110 to 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1132, 47–1806.

§ 35–1110. Taxation on earnings on reserves for unpaid loss and unexpired insurance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1112, 35–1114 to 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1132, 47–1806.

§ 35–1111. Taxes on investment income from funds representing capital stock and surplus.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1112, 35–1114 to 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1132, 47–1806.

§ 35–1112. Report to include all items necessary to enable Superintendent of Insurance to compute tax—Notification of amount of tax.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114 to 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1132, 47–1806.

§ 35–1113. Taxation in lieu of license fees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114 to 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1132, 35–1202, 47–1806.

§ 35–1114. Report upon cessation of marine insurance business—Taxes and license fees to be paid after such cessation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1115, 35–1117, 35–1118, 35–1121, 35–1122, 35–1124, 35–1128, 35–1129 to 35–1132, 47–1806.

§ 35–1115. Penalty for failure to report or pay taxes.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1117, 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1132, 47–1806.

§ 35–1116. Syndicate "B" exempt from taxes and fees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1132, 47–1806.

§ 35–1117. Insurance companies not exempt from payment of Federal income tax.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1132, 47–1806.

§ 35–1118. Investment of assets of domestic companies.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1132, 47–1806.

§§ 35–1119, 35–1120.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1132, 47–1806.

§ 35–1121. Establishment of foreign connections.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1122, 35–1124, 35–1128 to 35–1132, 47–1806.

§ 35–1122. Corporations engaged exclusively in writing insurance in foreign countries may organize in District of Columbia.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121, 35–1124, 35–1128 to 35–1132, 47–1806.

§ 35–1123. Prohibition of unauthorized insurance—Licensing of brokers in certain cases.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121, 35–1122, 35–1124, to 35–1126, 35–1128 to 35–1132, 47–1806.

§ 35–1124. Superintendent of insurance may issue license to agent or broker to solicit marine insurance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121 to 35–1123, 35–1126, 35–1128 to 35–1132, 47–1806.

§ 35–1125. Holder of license to maintain office in District of Columbia and to keep book of records—Contents—Superintendent of Insurance may inspect such record—Data secured by Superintendent to be confidential.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121 to 35–1124, 35–1126, 35–1128 to 35–1132, 47–1806.

§ 35–1126. License to furnish bond.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121 to 35–1125, 35–1128 to 35–1132, 47–1806.

§ 35–1127. Keeping of classified records.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1132, 47–1806.

§ 35–1128. Penalties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121, 35–1122, 35–1124, 35–1129 to 35–1132, 47–1806.

§ 35–1129. Repealed. Oct. 15, 1970, Pub. L. 91–452, title II, § 255, 84 Stat. 931.

Section, act Mar. 4, 1922, 42 Stat. 414, ch. 93, title 11, § 29, related to the production of incriminating evidence and the immunity of witnesses. For current provisions relating to immunity of witnesses, see 18 U.S.C. 6002.

EFFECTIVE DATE OF REPEAL

See sec. 260 of act Oct. 15, 1970, Pub. L. 91–452, set out as a note to § 23–545.

§ 35–1130. Clerical assistance and departmental expenses.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121, 35–1122, 35–1124, 35–1128, 35–1129, 35–1131, 35–1132, 47–1806.

§ 35–1131. Separability of provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1130, 35–1132, 47–1806.

§ 35–1132. Right to amend or repeal reserved.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1101 to 35–1103, 35–1105, 35–1108, 35–1109, 35–1111, 35–1114, 35–1115, 35–1117, 35–1118, 35–1121, 35–1122, 35–1124, 35–1128 to 35–1131, 47–1806.

Chapter 12.—INSURANCE AGENTS OTHER THAN LIFE

§ 35–1201. Insurance agents to secure licenses—Commissions to unlicensed agents prohibited—Penalties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–105, 35–201, 35–1202.

§ 35–1202. Fraternal associations exempt under this chapter—Employment of solicitors and license fees therefor—Industrial insurance may be carried on—Industrial insurance license—Penalty for soliciting without license.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–105, 35–201.

Chapter 13.—FIRE, CASUALTY, AND MARINE INSURANCE

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 35–1501, 35–1502.

SUBCHAPTER I.—FIRE, CASUALTY, AND MARINE INSURANCE, GENERALLY

§ 35–1303. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1401.

§ 35–1304. Records of Insurance Department—Power to make rules.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(277) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to making rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 35–1305. Certificate of authority—Necessity for—Expiration—Requirements.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1303, 35–1318, 35–1323.

§ 35–1306. Revocation and suspension of certificate of authority—Grounds for—Notice and hearing.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1409, 35–1509, 35–1611.

§ 35–1308. Receivership — Grounds for—Injunction—Hearing—Liquidation by Superintendent—Title to property—Notice to be recorded in office of recorder of deeds—Appointment and compensation of clerks and special deputies—Expenses—Bond of receiver.

The superintendent may, through the corporation counsel of the District, apply to the court having jurisdiction of civil actions wherein the amount in

controversy exceeds $50,000 for a rule directing any company organized under the laws of the District or any company in the course of organization to show why the superintendent should not take possession of its property and conduct its business as the nature of the case and the interests of the policyholders, creditors, stockholders, or the public may require, whenever any such company is—

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, § 168(g), title I, 84 Stat. 589.)

AMENDMENT

1970—Section 168(g) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 35–1311. Annual statement—Time for filing—Extension of time—Verification—Blanks to be furnished—Form and modification of blanks—Publication of statement.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1330.

§ 35–1313. Examinations—Production of books and papers—Expenses—False statements, reports, or entries—Penalties—Foreign or alien companies, acceptance of examinations made by other authorities.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1303.

§ 35–1315. Limitation of risk—Reinsured risks excluded from computations—Workmen's compensation, employers' liability, marine or inland marine risks excluded.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1305.

§ 35–1316. Capital and surplus, minimum requirements.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 26–301, 35–1305.

§ 35–1317. Existing companies, application of act—Capital and surplus requirements.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1328, 35–1329.

§ 35–1324. Lloyd's organizations—Requirements—Limitation of risk—Surplus—Filing copy of power of attorney—Annual statement—Verification.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1323.

§ 35–1327. Process, service upon foreign or alien companies by service on Superintendent—Force and effect—Registered letter to company—Proof of service—Penalty for failure to designate attorney for service of process.

* * * * *

(b) *Attorney for services of process.*—Every foreign or alien company now or hereafter authorized to transact business in the District shall file with the superintendent a duly executed instrument appointing and constituting him and his successors true and lawful attorney for such company, upon whom all lawful process in any action or legal proceeding against it in the District may be served, and therein shall agree that any lawful process against it, which may be served upon its said attorney as herein provided, shall be of the same force and validity as if served upon the company, and that the authority thereof shall continue in force irrevocably so long as any liability of the company in the District shall remain outstanding. Such process shall be served by delivering to and leaving the same with the superintendent or his deputy, and service thereof upon such attorney shall be deemed service upon the company. The superintendent shall forthwith forward such process by prepaid registered mail or by certified mail to the company, or, in the case of an alien company, to the United States manager or last-appointed United States general agent of the company. The registry receipt evidencing the deposit by the superindendent, or his deputy, of such process, in the United States mails in the manner herein prescribed, shall be prima facie evidence of the competition of such service. Failure of any such company to file such an instrument, or failure on the part of any such company to authorize such filing, shall not invalidate any service made by serving the superintendent. By accepting a certificate of authority to transact business in the District, every such company shall be held to have appointed the superintendent its true and lawful attorney. Any such company transacting business in the District without designating an attorney for service of process as herein provided shall, upon information filed by the corporation counsel of the District in the Superior Court of the District of Columbia, be fined upon conviction not less than $10 nor more than $500 for each day during which the company shall have operated in violation of this section. (As amended July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of act July 29, 1970, Pub. L. 91–358, amended subsec. (b) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding § 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1317, 35–1326.

§ 35–1328. Names of mutual or reciprocal companies—Requirements—Exceptions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1317.

§ 35–1336. Agents and brokers, license—Form of application—Request by company or agent, form and contents—Bond of brokers—Written examination—Requirements for license—Waiver of examination—Issuance to individuals or firms—License for own business prohibited.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1339, 35–1345.

§ 35–1339. Renewal of licenses—Written notice of refusal to renew—Hearing—Application to court for leave to continue business pending appeal.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1365.

§ 35–1340. Revocation and suspension of licenses—Grounds for—Notice and hearing—Evidence.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1336, 35–1339, 35–1409, 35–1509, 35–1611.

§ 35–1342. Exemption from license—Sale of accident insurance in railroad ticket offices, common carriers—Travel bureau—Business of ocean marine insurance, insurance covering railroad property and other common carriers.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1335.

§ 35–1343. Agents prohibited from representing unauthorized companies—"Companies" defined—Penalties—Civil liability—Exceptions—Prosecution.

Except as provided in section 35–1344, no person shall act as agent in the District for any company which is not authorized to do business in the District, nor shall any person directly or indirectly negotiate for or solicit applications for policies of, or for membership in, any company which is not authorized to do business in the District. The term "company" as used in this section shall include any association, society, company, corporation, joint-stock company, individual, partnership, trustee, or receiver engaged in the business of assuming risks of insurance, surety, or indemnity, and any Lloyd's organization, assessment, or cooperative fire company, or any reciprocal or interinsurance exchange, and any company, association, or society, whether organized for profit or not, conducting a business, including any of the principles or features of insurance, surety, or indemnity. Any person who violates any provision of this section upon conviction shall be fined not less than $100 nor more than $1,000 for each offense, or be imprisoned for not more than twelve months, or both, and any such person shall be personally liable to any resident of the District having claim against any such unauthorized company under any policy which said person has solicited or negotiated, or has aided in soliciting or negotiating: *Provided,* That the provisions of this section shall not apply to any person who negotiates with an unauthorized company for policies covering his own property or interests, nor shall the provisions of this section apply to the officers, agents, or representatives of any company which is in process of organization under the laws of the District, and which is authorized temporarily to solicit or secure memberships or applications for policies for the purpose of completing such organization. Prosecutions for violations of this section shall be upon information filed in the Superior Court of the District of Columbia by the corporation counsel or any of his assistants. (Oct. 9, 1940, 54 Stat. 1080, ch. 792, Ch. II, § 39; Feb. 22, 1958, 72 Stat. 26, Pub. L. 85–334, § 10; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Pub. L. 91–358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 35–1344. License to write policy in unauthorized company when no authorized company available—Taxation—Reports, form and contents—Revocation or refusal.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1343.

§ 35–1345. License fees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1339, 35–1344.

§ 35–1346. Repealed. Oct. 15, 1970, Pub. L. 91–452, title II, § 253, 84 Stat. 931.

EFFECTIVE DATE OF REPEAL

See sec. 260 of act Oct. 15, 1970, Pub. L. 91–452, set out as a note to § 23–545.

§ 35–1347. Penalties not otherwise prescribed.

Any person who violates any of the provisions of this chapter, or fails to comply with any duty imposed upon such person by any of the provisions of this chapter, for which violation or failure no penalty is elsewhere provided by this chapter, or by the laws of the District, shall, upon conviction thereof, be fined for each offense not exceeding $1,000 or be imprisoned for not more than twelve months, or both. Prosecutions authorized by this section shall be upon information filed in the Superior Court of the District of Columbia by the corporation counsel or any of his assistants. (Oct. 9, 1940, 54 Stat. 1082, ch. 792, Ch. II, § 43; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of act July 29, 1970, Pub. L. 91–358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof" Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1363, 35–1611.

§ 35–1348. Appeal from Superintendent to Commissioners—Time for—Hearing on appeal—Effect of Commissioners' decision.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1365, 35–1403, 35–1612.

§ 35–1349. Court proceedings—Superintendent not liable for costs, damages, or to give supersedeas bond.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 35–1339, 35–1348, 35–1365, 35–1403, 35–1510, 35–1612.

SUBCHAPTER II.—INSURANCE PREMIUM FINANCE COMPANIES

§ 35–1365. Revocation and suspension of licenses.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 35–1367. Power to make rules.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 14.—REGULATION OF FIRE INSURANCE RATES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 35–1502.

§ 35–1403. Adjustment of rates—Powers and duties of Superintendent—Removal of discriminations—Appeal from Superintendent's rulings.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 35–1404. Organization of rating bureau—Membership—Powers and duties—Apportionment of expenses.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(278) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in the particulars described in par. 278, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 15.—REGULATION OF CASUALTY AND OTHER INSURANCE RATES

§ 35–1503. Making of rates.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1504.

§ 35–1504. Supervision of rates.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1503.

§ 35–1505. Cooperative and concerted action authorized.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1506.

§ 35–1508. Authority and duty of Superintendent.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(279) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in the particulars described in par. 279, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 16.—CREDIT LIFE, ACCIDENT, AND HEALTH INSURANCE

§ 35–1604. Amount of credit life insurance and credit accident and health insurance.

* * * * *

(c) Notwithstanding subsections (a) and (b), the amount of any credit life insurance or credit accident and health insurance with respect to indebtedness incurred to defray educational costs of a student may include the part of a commitment that has not been advanced by the creditor. (Sept. 25, 1962, 76 Stat. 581, Pub. L. 87–686, § 4; Sept. 20, 1966, 80 Stat. 821, Pub. L. 89–594, § 2.)

CODIFICATION

Subsection (c) is set out in this supplement to correct a typographical error therein as it appears in the main volume.

§ 35–1605. Term of credit life insurance and credit accident and health insurance.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1606.

§ 35–1608. Refunds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1605.

§ 35–1612. Judicial review.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 17.—INSURANCE PLACEMENT

Sec.

35–1701. Declaration of purpose.
35–1702. Definitions.
35–1703. Industry placement facility.
35–1704. Fair access to insurance requirements.
35–1705. Joint Underwriting Association.
35–1706. Examination by Commissioner.
35–1707. Waiver of liability.
35–1708. Annual reports by Joint Underwriting Association.
35–1709. Appeals.
35–1710. Reimbursement for reinsurance provided under National Insurance Development Program.
35–1711. Delegation.

§ 35–1701. Declaration of purpose.

The purposes of this chapter are—

(1) to assure stability in the property insurance market for property located in the District of Columbia;

(2) to assure the availability of basic property insurance as defined by this chapter;

(3) to encourage maximum use, in obtaining basic property insurance, of the normal insurance market provided by authorized insurers; and

(4) to provide for the equitable distribution among insurers of the responsibility for insuring qualified property in the District of Columbia for which insurance cannot be obtained through the normal insurance market and to authorize the establishment of a joint underwriting association in the District of Columbia to provide for reinsuring of basic property insurance without regard to environmental hazards.

(Aug. 1, 1968, Pub. L. 90–448, § 1202, title XII, 82 Stat. 567.)

SHORT TITLE

Section 1201, act Aug. 1, 1968. Pub. L. 90–448, provided: "This title [This chapter and section 11–742(a)(12)] may be cited as the 'District of Columbia Insurance Placement Act.'" (The reference to section 11–742(a)(12) is no longer applicable as Title 11 was amended generally by Pub. L. 91–358.)

CROSS REFERENCE

National Insurance Development Program, see title XII of the National Housing Act, as added by sec. 1103, Pub. L. 90–448, sections 1749bbb et seq., title 12 U.S. Code.

§ 35–1702. Definitions.

As used in this chapter, unless the context otherwise requires—

(1) The term "Commissioner" means the Commissioner of the District of Columbia or his designated agent.

(2) The term "basic property insurance" means (1) insurance against direct loss to property caused by perils as defined and limited in the standard fire policy and extended coverage endorsement thereon, as approved by the Commissioner, and (2) such other insurance (including insurance against the perils of vandalism, malicious mischief, burglary, theft, and robbery) as the Commissioner may designate (under regulations adopted or made under section 35–1704) from those lines of property insurance for which reinsurance is available for losses from riots or civil disorders under part B of title XII of the National Housing Act.

(3) The term "environmental hazard" means any hazardous condition that might give rise to loss under an insurance contract, but which is beyond the control of the property owner.

(4) The term "inspection bureau" means any rating bureau or other organization designated by the Commissioner to perform inspections to determine the condition of the properties for which basic property insurance is sought.

(5) The terms "Industry Placement Facility" and "Facility" mean the facility consisting of all insurers licensed to write and engaged in writing basic property insurance (including homeowners and commercial multiperil policies) within the District of Columbia to assist agents, brokers, and applicants in securing basic property insurance.

(6) The term "premiums written" means gross direct premiums charged with respect to property in the District of Columbia on all policies of basic property insurance and the basic property insurance premium components of all multiperil policies, less all premiums and dividends returned, paid, or credited to policyholders or the unused or unabsorbed portions of premiums deposits.

(7) The term "property owner" means any person having an insurable interest in real, personal, or mixed real and personal property. (Aug. 1, 1968, Pub. L. 90–448, § 1203, title XII, 82 Stat. 568.)

REFERENCE IN TEXT

Part B of title XII of the National Housing Act, consists of sections 1221 to 1224, as added by section 1103 of the act of Aug. 1, 1968, Pub. L. 90–448, sections 1749bbb–7 et seq., title 12, U.S. Code.

NOTES TO DECISIONS

Authority of Superintendent of Insurance

District of Columbia Superintendent of Insurance has statutory authority to issue order including "crime lines" within definition of basic property insurance under this chapter even though the Secretary of Housing and Urban Development has not incorporated those lines into the definition of essential property insurance under the national insurance development programs, but the authority is qualified by substantive constitutional requirements of due process. *District of Columbia Insurance Placement Facility* v. *W.E. Washington, Commissioner, et ano.* (D.C. App. 1970, 269 A. 2d 45.)

§ 35–1703. Industry placement facility.

(a) Within thirty days after August 1, 1968 all insurers licensed to write and engaged in writing in the District of Columbia, on a direct basis, basic property insurance or any component thereof in multiperil policies, shall establish an Industry Placement Facility. The Facility shall formulate and administer a program, subject to disapproval by the Commissioner in whole or in part, to seek the equitable apportionment amount such insurers of basic property insurance which may be afforded applicants in the District of Columbia whose property is insurable in accordance with reasonable underwriting standards and who individually or through their insurance agent or broker request the aid of the Facility to procure such insurance. The Facility shall seek to place insurance with one or more participating companies up to the full insurable value of the risk, if requested, except to the extent that deductibles, percentage participation clauses, and other underwriting devices are employed to meet special problems of insurability.

(b) The Facility may, subject to the approval of the Commissioner, provide as part of its program for the equitable distribution of commercial risks and dwelling risks among insurers.

(c) Each insurer licensed to write and engaged in writing in the District of Columbia, on a direct basis, basic property insurance or any component thereof in multiperil policies shall participate in the Industry Placement Facility program in accordance with the established rules of the program as a condition of its authority to transact such kinds of insurance in the District of Columbia, except that, in lieu of revoking or suspending the certificate of authority of any company for any failure to comply with any of the established rules of the program, the Commissioner may subject such company to a penalty of not more than $200 for each such failure to so comply when in his judgment he finds that the public interest would be best served by the continued operation of the company in the District of Columbia. (Aug. 1, 1968, Pub. L. 90–448, § 1204, title XII, 82 Stat. 568.)

NOTES TO DECISIONS

Due process

Order of District of Columbia Superintendent of Insurance including "crime lines" within definition of basic property insurance under this chapter denied due process since it was issued without giving Insurance Placement Facility, which was established to implement federal program of establishing and effectuating plans to assure fair access to insurance requirements, notice or opportunity for hearing. *District of Columbia Insurance Placement Facility* v. *W. E. Washington, Commissioner, et ano.* (D.C. App. 1970, 269 A. 2d 45.)

§ 35–1704. Fair access to insurance requirements.

(a) The Industry Placement Facility shall on its own motion, or within thirty days after a request by the Commissioner, submit to the Commissioner such proposed rules and regulations applicable to insurers, agents, and brokers deemed necessary to

assure all property owners fair access to basic property insurance through the normal insurance markets, including rules and regulations concerning—

(1) the manner and scope of inspections of risk by an inspection bureau;

(2) the preparation and filing of inspection reports and reports on actions taken in connection with inspected risks, and summaries thereof;

(3) the operation of the Facility, including rules and regulations concerning—

(A) the basic property insurance coverages to be provided through the Facility;

(B) the reasonable effort to obtain insurance in the normal commercial market required of an applicant before recourse to the Facility; and

(C) the appeals procedure within the Facility for any applicant for insurance regarding any ruling, action, or decision by or on behalf of the Facility.

(b) The Commissioner may adopt such of the rules and regulations submitted pursuant to subsection (a) of this section as he approves. If the Commissioner disapproves any proposed rule or regulation submitted, he shall state the reasons for so doing, and he shall require the Facility to submit a revision thereof within such time as he may designate, but no less than ten days. During such designated time, the Commissioner and the Facility shall consult regarding any such disapproved rule or regulation. If the Facility fails to submit a proposed rule or regulation, or revision thereof, within the designated time, or if a revised rule or regulation is unacceptable to the Commissioner, the Commissioner may make such rules and regulations covering the proposed general subject matter as he shall deem necessary to carry out the purposes of this chapter. Any rule or regulation adopted or made under this section shall be consistent with the requirements of part A of title XII of the National Housing Act. (Aug. 1, 1968, Pub. L. 90–448, § 1205, title XII, 82 Stat. 569.)

REFERENCE IN TEXT

Part A of title XII of the National Housing Act, consists of sections 1211 to 1214, as added by section 1103 of the act of Aug. 1, 1968, Pub. L. 90–448, sections 1749bbb–3 et seq., title 12, U.S. Code.

NOTES TO DECISIONS

Authority of Superintendent of Insurance

District of Columbia Superintendent of Insurance has statutory authority to issue order including "crime lines" within definition of basic property insurance under this chapter even though the Secretary of Housing and Urban Development has not incorporated those lines into the definition of essential property insurance under the national insurance development program, but the authority is qualified by substantive constitutional requirements of due process. *District of Columbia Insurance Placement Facility* v. *W. E. Washington, Commissioner, et ano.* (D.C. App. 1970, 269 A. 2d 45).

Construction

The provision in § 35–1704(b) that the Superintendent of Insurance may not adopt procedures conflicting with minimum administrative procedures for the operation of the fair plans is not to be construed as preventing Superintendent from proceeding toward an expansion of insurance coverage as provided in § 35–1702(3). *District of Columbia Insurance Placement Facility* v. *W. E. Washington, Commissioner, et ano.* (D.C. App. 1970, 260 A. 2d 45).

Due process

Order of District of Columbia Superintendent of Insurance including "crime lines" within definition of basic property insurance under this chapter denied due process since it was issued without giving Insurance Placement Facility, which was established to implement federal program of establishing and effectuating plans to assure fair access to insurance requirements, notice or opportunity for hearing. *District of Columbia Insurance Placement Facility* v. *W. E. Washington, Commissioner, et ano.* (D.C. App. 1970, 269 A. 2d 45).

§ 35–1705. Joint Underwriting Association.

(a) The Commissioner is authorized to establish by order a joint underwriting association if he finds, after notice and hearing, that such association is necessary to carry out the purposes of this chapter. Such joint underwriting association shall consist of all insurers licensed to write and engaged in writing in the District of Columbia, on a direct basis, such basic property insurance as may be designated by the Commissioner or any component thereof in multiperil policies.

(b) Every such insurer shall be and remain a member of the association and shall comply with all requirements of membership as a condition of its authority to transact such kinds of insurance in the District of Columbia, except that in lieu of revoking or suspending the certificate of authority of any company for any failure to comply with any of the requirements of membership, the Commissioner may subject such company to a penalty of not more than $200 for each such failure to so comply when in his judgment he finds that the public interest would be best served by the continued operation of the company in the District of Columbia.

(c)(1) Within sixty days following the effective date of the order of the Commissioner under this section the association shall submit to him a proposed plan of operation, consistent with the provisions of this chapter, which shall provide for economical, fair, and nondiscriminatory administration of the association and for the prompt and efficient provision of reinsurance, without regard to environmental hazards, for such basic property insurance as may be designated by the Commissioner. The plan of operation shall include provisions for—

(A) preliminary assessment of all members for initial expenses necessary to commence operations;

(B) establishment of necessary facilities;

(C) management and operation of the association;

(D) assessment of members to defray losses and expenses;

(E) commission arrangements;

(F) reasonable underwriting standards;

(G) assumption and cessation of reinsurance; and

(H) such other matters as the Commissioner may designate.

(2) The plan of operation shall not take effect until approved by the Commissioner. If the Commissioner disapproves the proposed plan of operation (or any part thereof), he shall state the reasons for so doing, and the association shall within thirty days thereafter submit for his review an ap-

propriately revised plan of operation. During such time, the Commissioner and the association shall consult regarding the disapproved plan or part thereof. If the association fails to submit a revised plan of operation, or if the revised plan so submitted is unacceptable to the Commissioner, the Commissioner shall promulgate a plan of operation.

(3) The association may, on its own initiative, amend such plan, subject to approval by the Commissioner, and shall amend such plan at the direction of the Commissioner if he finds such action is necessary to carry out the purposes of this chapter.

(d) All members of the association shall participate in its writings, expenses, profits, and losses, or in such categories thereof as may be separately established by the association, subject to approval by the Commissioner, in the proportion that the premiums written by each such member during the preceding calendar year bear to the aggregate premiums written in the District of Columbia by all members of the association, or in accordance with such other formula as the association may devise with the approval of the Commissioner. Such participation by each insurer in the association shall be determined annually on the basis of such premiums written during the preceding calendar year as disclosed in the annual statements and other reports filed by the insurer with the Commissioner.

(e) The association shall be governed by a board of eleven directors, elected annually by cumulative voting by the members of the association, whose votes in such election shall be weighted in accordance with the proportionate amount of each member's net direct premiums written in the District of Columbia during the preceding calendar year. The first board shall be elected at a meeting of the members or their authorized representatives, which shall be held within thirty days after the effective date of the order under this section establishing the association, at a time and place designated by the Commissioner. (Aug. 1, 1968, Pub. L. 90–448, § 1206, title XII, 82 Stat. 569.)

§ 35–1706. Examination by Commissioner.

The operation of any inspection bureau, the Industry Placement Facility, and the joint underwriting association shall at all times be subject to the supervision and regulation of the Commissioner. The Commissioner shall have the power of visitation of and examination into such operations and free access to all the books, records, files, papers, and documents that relate to such operations, may summon and qualify witnesses under oath, and may examine directors, officers, agents, employees or, any other person having knowledge of such operations. (Aug. 1, 1968, Pub. L. 90–448, § 1207, title XII, 82 Stat. 571.)

§ 35–1707. Waiver of liability.

There shall be no liability on the part of, and no cause of action of any nature shall arise against, insurers, any inspection bureau, the Industry Placement Facility, the joint underwriting association, the agents or employees of such bureau, Facility, or association, or any officer or employee of the District of Columbia, for any statements made in good faith by them concerning the insurability of property (A) in any reports or other communications, (B) at the time of the hearings conducted in connection therewith, or (C) in the findings with respect thereto required by the provisions of this chapter. The reports and communications of any inspection bureau, the Industry Placement Facility, and the joint underwriting association with respect to individual properties shall not be open to inspection by, or otherwise available to, the public. (Aug. 1, 1968, Pub. L. 90–448, § 1208, title XII, 82 Stat. 571.)

§ 35–1708. Annual reports by Joint Underwriting Association.

The joint underwriting association shall file with the Commissoner, annually on or before the 1st day of March, a statement which shall contain information with respect to its transactions, condition, operations, and affairs during the preceding year. Such statement shall contain such matters and information as are prescribed by the Commissioner and shall be in such form as is approved by him. The Commissioner may at any time require the association to furnish him with additional information with respect to its transactions, condition, or any matter connected therewith which he considers to be material and which will assist him in evaluating the scope, operation, and experience of the association. (Aug. 1, 1968, Pub. L. 90–448, § 1209, title XII, 82 Stat. 571.)

§ 35–1709. Appeals.

(a) Any applicant for insurance and any affected insurer may appeal to the Commissioner within ninety days after any final ruling, action, or decision by or on behalf of any inspection bureau, the Industry Placement Facility, or the joint underwriting association, following exhaustion of remedies available within such bureau, Facility, or association.

(b) All final orders or decisions of the Commissioner made under this chapter shall be subject to review by the District of Columbia Court of Appeals under the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510). (Aug. 1, 1968, Pub. L. 90–448, § 1210, title XII, 82 Stat. 571; July 29, 1970, Pub. L. 91–358, title I, § 163(d), 84 Stat. 583.)

AMENDMENT

1970—Section 163(d) of Act July 29, 1970, Public Law 91–358 amended section by striking out "section 11–742 of the District of Columbia Code" and inserting in lieu thereof "the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510)".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 35–1710. Reimbursement for reinsurance provided under National Insurance Development Program.

(a) In order to carry out the purposes of this chapter and to make available to insurers who participate hereunder the reinsurance afforded under part B of title XII of the National Housing Act against losses to property resulting from riots or civil disorders, the Commissioner is authorized to

assess each insurance company authorized to do business in the District of Columbia an amount, in the proportion that the premiums earned by each such company in the District of Columbia, on lines reinsured in the District of Columbia by the Secretary of Housing and Urban Development, during the preceding calendar year bear to the aggregate premiums earned on those lines in the District of Columbia by all insurance companies, sufficient to provide a fund to reimburse the Secretary of Housing and Urban Development in the manner set forth in section 1223(a)(1) of such part B. Such fund may be added to or such fund may be created by moneys appropriated therefor by the Congress.

(b) Insurers shall add to the premium rate an amount, to be approved by the Commissioner, sufficient to recover, within not more than three years, any amounts assessed under subsection (a) of this section during the preceding calendar year. Such amount shall be a separate charge to the insured in addition to the premium to be paid and shall be reflected as such in the policy of insurance. No commission shall be paid thereon to any agent or broker producing or selling the policy of insurance wherein such amount is added. (Aug. 1, 1968, Pub. L. 90–448, § 1211, title XII, 82 Stat. 572.)

REFERENCE IN TEXT

Part B of title XII of the National Housing Act, consists of sections 1221 to 1224, as added by section 1103 of the act of Aug. 1, 1968, Pub. L. 90–448, sections 1749bbb–7 et seq., title 12, U.S. Code.

§ 35–1711. Delegation.

The Commissioner is authorized to delegate any of the functions vested in him by this chapter. (Aug. 1, 1968, Pub. L. 90–448, § 1212, title XII, 82 Stat. 572.)

TRANSFER OF FUNCTIONS

Reorganization Order No. 43, as amended Aug. 12, 1968, delegated to the Superintendent of Insurance the functions vested in the Commissioner by this chapter. For full details see the order as set out in the appendix to title 1.

TITLE 36.—LABOR

Chapter 1A.—VOLUNTARY APPRENTICES

§ 36–122. Apprenticeship Council — Membership — Term—Compensation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 36–129. Registration and approval of agreements—Agreements extending into majority of apprentice.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36–128.

§ 36–130. Violations of agreements—Hearings—Determinations—Appeals.

* * * * *

(b) The determination of the Director shall be filed with the council. If no appeal therefrom is filed with the council within ten days after the date thereof, as herein provided, such determination shall become the order of the council. Any person aggrieved by any determination or action of the Director may appeal therefrom to the council, which shall hold a hearing thereon after due notice to the interested parties. Any person aggrieved by the action of the Council may appeal as provided in the District of Columbia Administrative Procurement Act (D.C. Code, secs. 1–1501 to 1–1510). (May 21, 1946, 60 Stat. 206, ch. 267, § 10; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, § 163(e), title I, 84 Stat. 583.)

AMENDMENT

1970—Section 163(e) of Act July 29, 1970, Public Law 91–358 amended subsection (b) by striking out the fourth sentence and all that follows and inserting in lieu thereof "Any person aggrieved by the action of the Council may appeal as provided in the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510)."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 2.—CHILD LABOR AND WORK PERMITS

Sec.
36–228. Family Division of Superior Court has jurisdiction.

§ 36–201. Regulation of child labor—Employment of children under fourteen years of age—Distribution of newspapers permitted.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–202, 36–208, 36–215, 36–228.

§ 36–202. Employment of children under eighteen years of age—Hours of employment—Notice to be posted in place of employment—List of minors employed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–212, 36–215, 36–228.

§ 36–203. Employment dangerous or prejudicial to life prohibited—Board of Education to prohibit such employment by general or special order.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–208, 36–212, 36–215, 36–228.

§§ 36–204 to 36–207.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 36–203, 36–212, 36–215, 36–228.

§ 36–208. Work or vacation permit—Procurement by employer.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–212, 36–215, 36–228.

§ 36–209. Permit issued by director of school attendance and work permits—Contents—Record of applicants to be kept—List of permits granted or refused to be sent weekly to schools.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–210, 36–212, 36–215, 36–228.

§ 36–210. Application for permit—Evidence required to be furnished—Physician's certificate—School record.

SECTION REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 36–212, 36–215, 36–228.

§ 36–211. Evidence of age.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–210, 36–212, 36–215, 36–228.

§§ 36–212 to 36–214.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 36–212, 36–215, 36–228.

§§ 36–215, 36–216.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 36–212, 36–228.

§ 36–217. Limitations on employment in stuffing of newspapers—Sale of newspapers in streets—Distribution of papers on fixed routes.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–201, 36–202, 36–212, 36–218 to 36–220, 36–222, 36–223, 36–228.

§§ 36–218 to 36–221.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 36–201, 36–212, 36–222, 36–223, 36–228.

§ 36–222. Penalties for violations of sections 36–217 to 36–224—Commitments to Board of Public Welfare—Probationary supervision—Revocation of badge.

Any minor who shall engage in any of the trades or occupations mentioned in section 36–217, in vio-

lation of any of the provisions of sections 36–217 to 36–224, shall for the first offense be warned by the director of the department of school attendance and work permits and the parent, guardian, or custodian of such minor shall be notified. For any subsequent violation, while under the care of said parent, guardian, or custodian, and with his or her knowledge, or consent, said minor may, in the discretion of the court, be deemed to be lacking in proper parental care and guardianship, and may on petition filed for that purpose, and in the discretion of the court, be committed to the Board of Public Welfare of the District of Columbia until twenty-one years of age or for a shorter period as the court may see fit, the said Board of Public Welfare being hereby expressly authorized and required to receive minors so committed. The court may, instead of immediate commitment, suspend the imposition or execution of judgment of commitment, or may, after partial hearing and instead of proceeding to judgment, suspend further proceedings without judgment, with the consent of the parent, guardian, or custodian of said minor, and in either event may assign a probation officer of the Family Division of the Superior Court to exercise probationary supervision over said minor, said probationary supervision to continue in force and the said minor to remain under the jurisdiction and control of the court as a ward of the court until said minor attains the age of seventeen years, or unless sooner discharged by order of the court or committed to said Board of Public Welfare, the court hereby being given power to withdraw said case from said probationary supervision at any time during said probation period, and after a hearing may commit said minor at once to the said board if, in the opinion of the court, the best interests and welfare of said minor shall so require. Upon the recommendation of the principal or chief executive officer of the school which said minor is attending or upon the complaint of any school attendance officer, or any officer authorized to enforce this chapter, the badge of any minor who violates any provision of this chapter, or who becomes delinquent, or who fails to comply with all the legal requirements concerning school attendance, may be revoked by the director of the department of school attendance and work permits for such period as the said officer may require; and upon revocation said officer shall so notify the parent, guardian, or custodian having such minor in charge, and it shall thereupon become the duty of said parent, guardian, or custodian to surrender or require said minor to surrender said badge to the said officer. After notice to such minor and his parent, guardian, or custodian of revocation of such badge, he shall be deemed to be in the same status as a minor without a badge. The refusal of any such minor to surrender his badge upon such revocation shall be deemed a violation of this chapter. (May 29, 1928, 45 Stat. 1004, ch. 908, § 22; July 29, 1970, Pub. L. 91–358, title I, § 159(j)(1), 84 Stat. 578.)

AMENDMENT

1970—Section 159(j)(1) of Act July 29, 1970, Public Law 91–358 amended section by striking out "Juvenile Court" and inserting in lieu thereof "Family Division of the Superior Court."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTION

Board of Public Welfare abolished and specified functions transferred to Department of Public Health and Department of Public Welfare, see note under section 3–102 of main edition.

CROSS REFERENCE

General provisions concerning Board of Public Welfare, see § 3–101 et seq.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–201, 36–212, 36–223, 36–228.

§§ 36–223, 36–224.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 36–201, 36–212, 36–222, 36–228.

§§ 36–225 to 36–227.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 36–212, 36–228.

§ 36–228. Family Division of Superior Court has jurisdiction.

The Family Division of the Superior Court of the District of Columbia is hereby given jurisdiction in all cases arising under sections 36–201 to 36–227. (May 29, 1928, 45 Stat. 1006, ch. 908, § 26; July 29, 1970, Pub. L. 91–358, title I, § 159(j)(2), 84 Stat. 578.)

AMENDMENT

1970—Section 159(j)(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out "juvenile court" and inserting in lieu thereof "Family Division of the Superior Court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 3.—EMPLOYMENT OF WOMEN

§ 36–301. Employment of females—Period of employment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–302 to 36–309a.

§ 36–302. Hours of employment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–304 to 36–309.

§ 36–303. Hours of continuous labor restricted.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–304 to 36–309a.

§ 36–304. Notice to be posted—Allowance for meals.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–301, 36–305 to 36–309a.

§ 36–305. Time book to be kept.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–304, 36–306 to 36–309a.

§ 36–306. Inspectors—Appointment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–304, 36–305, 36–307 to 36–309.

§ 36–307. Inspectors authorized to enter buildings.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–304 to 36–306, 36–308, 36–309.

§ 36–308. Inspectors to enforce law—Reports.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–304 to 36–307, 36–309.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 36–309. Penalties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–304 to 36–308.

§ 36–309a. Exceptions as to requirements of certain sections, and as to keeping records of hours worked.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(280) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 36–310. Employers to furnish seats for female employees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–308, 36–311.

§ 36–311. Penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36–308.

Chapter 4.—MINIMUM WAGES AND INDUSTRIAL SAFETY

SUBCHAPTER I.—MINIMUM WAGES

§ 36–401. Findings and declaration of policy.

NOTES TO DECISIONS

Construction

The District of Columbia Minimum Wage Act [this subchapter] was intended to cover wages and hours of individuals working in transportation field solely within the District of Columbia, but does not apply to bus drivers who were engaged in interstate commerce, spending on the average 37.6 percent of working time in the District. *K. C. Williams et al.* v. *W.M.A. Transit Company* (D.C. App. 1970, 268 A. 2d 261).

§ 36–402. Definitions.

As used in this subchapter—

* * * * *

(8) The term "Washington metropolitan region" means the area consisting of the District of Columbia, Montgomery and Prince George's Counties in Maryland, Arlington and Fairfax Counties and the cities of Alexandria, Fairfax, and Falls Church in Virginia. (As amended Jan. 5, 1971, Pub. L. 91–650, title VII, § 703(a), 84 Stat. 1938.)

AMENDMENT

1971—Section 703(a) of act Jan. 5, 1971, Pub. L. 91–650, added par. (8) to read as above set out.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Construction

The District of Columbia Minimum Wage and Industrial Safety Board is entitled to use median wage level rather than entry-level income paid to those entering particular labor market as reference point in establishing minimum wage. *L. Allentuck, t/a etc. and Larimer's, Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

The District of Columbia Minimum Wage Act [this subchapter] was intended to cover wages and hours of individuals working in transportation field solely within the District of Columbia, but does not apply to bus drivers who were engaged in interstate commerce, spending on the average 37.6 percent of working time in the District. *K. C. Williams et al.* v. *W.M.A. Transit Company* (D.C. App. 1970, 268 A. 2d 261).

§ 36–403. Minimum wage and overtime compensation—Workweek—Wage orders.

* * * * *

(f) A wage order under this subchapter may establish at any one time only one wage rate for the occupation or the classification of employees within an occupation, as the case may be, to which the wage order applies. (As amended Jan. 5, 1971, Pub. L. 91–650, title VII, § 703(b), 84 Stat. 1938.)

AMENDMENT

1971—Section 703(b) of act Jan. 5, 1971, Pub. L. 91–650, added subsec. (f) to read as above set out.

APPLICABILITY OF 1971 AMENDMENT

Section 703(d) of act Jan. 5, 1971, Pub. L. 91–650, provided: "The amendment made by subsection (b) of this section [amending § 36–403] shall apply with respect to any wage order under the District of Columbia Minimum Wage Act [this subchapter] issued or revised after the date of enactment of this Act."

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–402, 36–404, 36–407, 36–408, 36–413.

NOTES TO DECISIONS

Construction

The District of Columbia Minimum Wage and Industrial Safety Board is entitled to use median wage level rather than entry-level income paid to those entering

particular labor market as reference point in establishing minimum wage. *L. Allentuck, t/a etc. and Larimer's, Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

§ 36–404. Exemptions of certain employees from minimum wage and overtime provisions of section 36–403.

(a) The minimum wage and overtime provisions of section 36–403 shall not apply with respect to—

(1) any employee employed in a bona fide executive, administrative, or professional capacity, or in the capacity of outside salesman (as such terms are defined by the Secretary of Labor under the Fair Labor Standards Act of 1938); or

(2) any employee engaged in the delivery of newspapers to the home of the consumer.

(b) The overtime provisions of section 36–403 (b)(1) shall not apply with respect to—

(1) any employee employed as a seaman;

(2) any employee employed by a railroad;

(3) any salesman, partsman, or mechanic primarily engaged in selling or servicing automobiles, trailers, or trucks if employed by a nonmanufacturing establishment primarily engaged in the business of selling such vehicles to utimate purchasers;

(4) any employee employed primarily to wash automobiles by an employer, more than 50 percent of whose annual dollar volume of sales is derived from washing automobiles, if for such employee's employment in excess of one hundred and sixty hours in a period of four consecutive workweeks, such employees receives compensation at a rate not less than one and one-half times the regular rate at which he is employed;

(5) any employee employed as an attendant at a parking lot or parking garage; or

(6) any employee (A) with respect to whom the Interstate Commerce Commission has power to establish qualifications and maximum hours of service pursuant to the provisions of section 204 of part II of the Interstate Commerce Act, and (B) who is not employed for more than 50 per centum of any workweek within the Washing metropolitan region.

(Sept. 19, 1918, 40 Stat. 961, ch. 174, title I, § 4; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Oct. 15, 1966, 80 Stat. 964, Pub. L. 89–684, § 1; Jan. 5, 1971, Pub. L. 91–650, title VII, § 702(a), 84 Stat. 1938.)

REFERENCES IN TEXT

The Fair Labor Standards Act of 1938, referred to in subsec. (a)(1), is classified to 29 U.S.C. § 201 et seq.

Section 204 of part II of the Interstate Commerce Act, referred to in subsec. (b)(6), is classified to 49 U.S.C. § 304.

AMENDMENT

1971—Section 702(a) of act Jan. 5, 1971, Pub. L. 91–650, amended subsec. (b) of section: (1) by striking out "or" at the end of paragraph (4), (2) by striking out the period at the end of paragraph (5) and inserting in lieu thereof a semicolon and "or", and (3) by adding after paragraph (5) a new paragraph (6) to read as above set out.

EFFECTIVE DATE OF 1971 AMENDMENT

Section 702(b) of act Jan. 5, 1971, Pub. L. 91–650, provided: "The amendments made by subsection (a) of this section [amending § 36–404(b)] shall take effect as of February 1, 1967."

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650.

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

§ 36–405. Powers and duties of Commissioners—Investigations—Statements from employers.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 36–406. Reconsideration and revision of wage orders—Ad hoc committees—Committee reports of findings and recommendations—Failure to report.

(a) At any time after a wage rate within a wage order has been in effect for one year the Commissioners may on their own motion reconsider such wage rate set in such wage order. If, after investigation, the Commissioners are of the opinion that any substantial number of workers in the occupation covered by such wage order are receiving wages insufficient to provide adequate maintenance and to protect health they may convene an ad hoc advisory committee for the purpose of considering and inquiring into and reporting to the Commissioners on the subject investigated by the Commissioners and submitted by them to such committee.

(b) The committee shall be composed of not more than three persons representing the employers in such occupation, of an equal number representing employees in such occupation, and of not more than three persons representing the public. The chairman of the agency designated by the Commissioner to administer this subchapter shall be an ex officio member of the Committee. Such agency shall name and appoint all the members of the committee and designate its chairman. Two-thirds of the members of the committee shall constitute a quorum, and any decision, recommendation, or report of the committee on the subject submitted to it shall require an affirmative vote of not less than a majority of all its members.

(c) The Commissioners shall present to the committee such information as they might have relating to the subject they submitted to the committee, and may cause to be brought before the committee any witnesses whose testimony the Commissioners consider material.

(d) Within sixty days after the convening of the committee by the Commissioners, the committee shall make and transmit to the Commissioners a report containing its findings and recommendations on the subject submitted to it by the Commissioners.

(e) The committee report shall include a recommendation for minimum wages for the employees in the occupation under consideration, but the minimum wage rates recommended shall not be less than those prescribed in subsection (a)(1) of section 36–403. In making such recommendation the committee shall take into consideration (1) the amount of wages sufficient to provide adequate maintenance

and to protect health, (2) the fair and reasonable value of the work performed, and (3) the wages paid in the Washington metropolitan region by fair employers for work of like or comparable character. The committee report shall also include recommendations for reasonable allowances for board, lodging, or other facilities or services, customarily furnished by the employer to the employees, or reasonable allowances for gratuities customarily received by employees in any occupation in which gratuities have customarily and usually constituted and have been recognized as a part of the remuneration for hiring purposes. The committee report may also recommend suitable minimum wages for learners and apprentices in the occupation under consideration, where it appears proper or necessary, and may recommend the maximum length of time any such employee may be kept at such wages as a learner or apprentice. The minimum wages recommended for learners and apprentices may be less than the minimum wages recommended for other employees in such occupation. The committee may make a separate inquiry into and report on any branch of any occupation and may recommend different minimum wages for such branch of employment in the same occupation.

(f) If such committee fails to submit a report to the Commissioners within the period specified in subsection (d) of this section, the Commissioners may (1) discharge such committee from further consideration of the subject submitted to it and convene a new committee for the purpose of considering such subject, or (2) consider the subject without the recommendations of an ad hoc advisory committee and prepare and publish a revised wage order for the occupation in accordance with the procedure specified in section 36–407 and after taking into consideration the matters referred to in the second sentence of subsection (e). (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 6; Oct. 15, 1966, 80 Stat. 965, Pub. L. 89–684, § 1; Jan. 5, 1971, Pub. L. 91–650, title VII, § 703(c), 84 Stat. 1938.)

AMENDMENT

1971—Section 703(c) of Act Jan. 5, 1971, Pub. L. 91–650, amended section as follows:

(1) The first sentence of subsection (a) of such section is amended (A) by striking out "wage order" the first time it appears and inserting in lieu thereof "wage rate within a wage order", and (B) by striking out "the wage rates" and inserting in lieu thereof "such wage rate".

(2) The first sentence of subsection (b) of such section is amended (A) by inserting "and" immediately after "occupation," the second time it occurs, and (B) by striking out ", and one or more representatives of the agency designated by the Commissioners to administer this subchapter." and inserting in lieu thereof a period and the following: "The chairman of the agency designated by the Commissioner to administer this subchapter shall be an ex officio member of the committee."

(3) Clause (3) of the second sentence of subsection (e) of such section is amended by striking out "District of Columbia" and inserting in lieu thereof "Washington metropolitan region".

(4) Subsection (f) of such section is amended by inserting immediately before the period at the end thereof the following: "and after taking into consideration the matters referred to in the second sentence of subsection (e)".

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36–402.

NOTES TO DECISIONS

Construction

The District of Columbia Minimum Wage and Industrial Safety Board is entitled to use median wage level rather than entry-level income paid to those entering particular labor market as reference point in establishing minimum wage. *L. Allentuck, t/a etc. and Larimer's, Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

It is the wage order and not the wage rate that must be in effect for one year before Minimum Wage and Industrial Safety Board may reconsider existing wage rate. *L. Allentuck, t/a etc. and Larimer's, Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

Discretion

The establishment of lower minimum wage rate for handicapped, apprentice and minor employees is within the discretion of District of Columbia Minimum Wage and Industrial Safety Board. *L. Allentuck, t/a etc. and Larimer's, Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

Evidence—Sufficiency

The findings of the District of Columbia Minimum Wage and Industrial Safety Board that wage rate adopted was required to provide adequate maintenance to protect health, and that rate was commensurate with fair and reasonable value of work performed and with that paid in District of Columbia by fair employers for work of like or comparable character were supported by substantial evidence. *L. Allentuck, t/a etc. and Larimer's, Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

Jurisdiction

The Court held that the Minimum Wage and Industrial Safety Board was not without jurisdiction to reconsider wage rate of existing wage order by reason of fact that such rate had been in effect less than one year. *L. Allentuck, t/a etc. and Larimer's, Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

Sufficiency of findings of fact

The court held that all interested parties are entitled to know and District of Columbia Court of Appeals, on review, must know basis and reasons for action of Minimum Wage and Industrial Safety Board in issuing wage order. *L. Allentuck, t/a etc. and Larimer's, Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

In this case the findings of fact consisting of only finding relating to general minimum weekly wage of $81.28 as sufficient to provide adequate maintenance and to protect health and finding that minimum wage in retail trade occupation should not be less than $2.00 an hour based on prescribed 40-hour work week were insufficient to support wage order issued by Minimum Wage and Industrial Safety Board. *Id.*

§ 36–407. Issuance of revised wage orders—Notice and hearing—Notice and effective date of orders—Contents of orders—Restrictions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–402, 36–406.

NOTES TO DECISIONS

Authority of Board

The current wage order containing sections covering definitions, minimum wage and overtime compensation, employees compensated by commissions, workers under age of 18, handicapped workers, apprentices, adult learners, minimum daily wages, split shifts, uniforms, travel expenses, deductions, allowances for meals and lodging, basis of payment, time of payment, required records and issuance of wage statements were not regulations and Minimum Wage and Industrial Safety Board did not exceed authority in issuing such order. *L. Allentuck, t/a etc. and Larimer's, Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

Construction

This District of Columbia Minimum Wage and Industrial Safety Board need not supply the same evidence or review its experience with previous wage orders to reestablish the various abuses and means of circumvention previously proscribed each time it issues a new minimum wage order. *L. Allentuck, t/a etc. and Larimer's, Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

The specific expression, in sections 36–408 (b) and (c) of matter for regulations to be made by Commissioners cannot be taken as an indication by Congress that such matters cannot also be subject of a wage order. *L. Allentuck, t/a etc. and Larimer's, Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

"Order" and "regulations" defined

An "Order" under section 36–407 is used to establish basic minimum level of income for an occupation and classification with additional provisions to insure its compliance, whereas "regulations" are used to make certain that there is coordination between all other government agencies or to secure inter-occupational uniformity. *L. Allentuck, t/a etc. and Larimer's, Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

Review

Since the employers did not challenge terms and conditions of minimum wage order before the Minimum Wage and Industrial Safety Board, employers will not be heard to complain on judicial review of the order. *L. Allentuck, t/a etc. and Larimer's, Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

Validity of wage order

To be valid, the terms and conditions of minimum wage order need only be supported by determination of necessity. *L Allentuck t/a etc. and Larimer's, Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

§ 36–408. Regulations of Commissions—Contents—Notice and hearing—Effective date.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(281) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section relating to making and revising regulations, including definitions of terms, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–402, 36–403, 36–413.

NOTES TO DECISIONS

Authority of Board

The current wage order containing sections covering definitions, minimum wage and overtime compensation, employees compensated by commissions, workers under age of 18, handicapped workers, apprentices, adult learners, minimum daily wages, split shifts, uniforms, travel expenses, deductions allowances for meals and lodging, basis of payment, time of payment, required records and issuance of wage statements were not regulations and Minimum Wage and Industrial Safety Board did not exceed authority in issuing such order. *L. Allentuck, t/a etc. and Larimer's Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

Construction

The specific expression in sections 36–408 (b) and (c) of matter for regulations to be made by Commissioners cannot be taken as an indication by Congress that such matters cannot also be subject of a wage order. *L. Allentuck, t/a etc. and Larimer's Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

§ 36–409. Judicial review of orders—Procedure—Scope of review—Additional evidence—Modification of or setting aside findings or orders—Stay pending determination of proceedings.

(a) Any person aggrieved by an order of the Commissioners issued under this subchapter may obtain a review of such order in the District of Columbia Court of Appeals by filing in such court, within sixty days after the issuance of such order, a written petition praying that the order of the Commissioners be modified or set aside in whole or in part. The review shall be governed by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510).

(b) The commencement of proceedings under subsection (a) shall not, unless specifically ordered by the court, operate as a stay of the Commissioners' order. The court shall not grant any stay of the order unless the person complaining or such order shall file in court an undertaking with a surety or sureties, satisfactory to the court, for the payment to the employees affected by the order, in the event such order is affirmed, of the amount by which the compensation such employees are entitled to receive under the order exceeds the compensation they actually receive while such stay is in effect. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 9; Oct. 15, 1966, 80 Stat. 967, Pub. L. 89–684, § 1; July 29, 1970, Pub. L. 91–358, § 163(f), title I, 84 Stat. 583.

AMENDMENTS

1970—Section 163(f) of Act July 29, 1970, Public Law 91–358 amended subsection (a) by striking out the second sentence and all that follows thereafter and inserting in lieu thereof "The review shall be governed by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510)."

For provisions of stricken matter see 1967 edition of the Code.

1966—Act Oct. 15, 1966, substituted entirely different provisions. See 1966 amendment note preceding § 36–401. Former provisions of this section (§ 10 of 1918 act) related to conferences on inadequate wages. For former provisions of § 9 of the 1918 act, see 1966 amendment note under § 36–408.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATE OF 1966 AMENDMENT

Effective date of amendment of this section by act Oct. 15, 1966, see § 4 of such act, set out as a note under § 36–401.

CROSS REFERENCE

Minimum Wage and Industrial Safety Board created under former provisions of § 36–402, abolishment and transfer of functions to Commissioners, re-establishment and delegation thereto of certain functions so transferred, see 1952 Reorg. Plan No. 5, set out in app. I to title 1 of this Code, Commissioners' Reorg. Ord. No. 36, June 16, 1953, as amended, set out in app. II to title 1. See also, § 2 of Act Oct. 15, 1966, Pub. L. 89–684, set out in note under § 36–401.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

NOTES TO DECISIONS

Evidence—Sufficiency

The findings of the District of Columbia Minimum Wage and Industrial Safety Board that wage rate adopted was required to provide adequate maintenance to protect health, and that rate was commensurate with fair and reasonable value of work performed and with that paid in District of Columbia by fair employers for work of like or comparable character were supported by substantial evidence. *L. Allentuck, t/a etc. and Larimer's, Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

Review

On review of order of District of Columbia Minimum Wage and Industrial Safety Board, the District of Columbia Court of Appeals will not substitute its judgment for that of the Board. *L. Allentuck, t/a etc., and Larimer's Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1970, 264 A. 2d 307).

Sufficiency of findings of fact

The court held that all interested parties are entitled to know and District of Columbia Court of Appeals, on review, must know basis and reasons for action of Minimum Wage and Industrial Safety Board in issuing wage order. *L. Allentuck, t/a etc. and Larimer's Inc.* v. *District of Columbia Minimum Wage and Industrial Safety Board* (D.C. App. 1969, 261 A. 2d 826).

In this case the findings of fact consisting of only a finding relating to general minimum weekly wage of $81.28 as sufficient to provide adequate maintenance and to protect health and finding that minimum wage in retail trade occupation should not be less than $2.00 an hour based on prescribed 40-hour work week were insufficient to support wage order issued by Minimum Wage and Industrial Safety Board. *Id.*

§ 36–410. Authority of Commissioners to take testimony and issue subpoenas—Punishment for contempt.

The Commissioners shall have power to administer oaths and require by subpena the attendance and testimony of witnesses, the production of all books, registers, and other evidence relative to any matters under investigation, at any public hearing or at any meeting of any committee or for the use of the Commissioners in securing compliance with this subchapter. In case of disobedience to a subpena the Commissioners may invoke the aid of the Superior Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of documentary evidence. In case of contumacy or refusal to obey a subpena the court may issue an order requiring appearance before the Commissioners, the production of documentary evidence, and the giving of evidence, and any failure to obey such order of the court may be punished by such court as a contempt thereof. (Sept. 19, 1918, 40 Stat. 962, ch. 174, title I, § 10; Oct. 15, 1966, 80 Stat. 968, Pub. L. 89–864, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of act July 29, 1970, Pub. L. 91–358, struck out "District of Columbia Court of General Sessions" and inserted in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding § 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 36–411. Records of employers—Availability for inspection—Sworn statements—Statements to employees.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(282) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in the particulars described in par. 282, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36–413.

§ 36–412. Posting of law and wage orders—Commissioners to furnish copies.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36–413.

§ 36–413. Prohibited acts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36–414.

§ 36-414. Penalties for violation—Jurisdiction—Prosecutions.

Any person who willfully violates any of the provisions of section 36–413 shall upon conviction thereof be subject to a fine of not more than $10,000, or to imprisonment of not more than six months, or both. No person shall be imprisoned under this section except for an offense committed after the conviction of such person for a prior offense under this section. Prosecutions for violations of this subchapter shall be in the Superior Court of the District of Columbia and shall be conducted by the Corporation Counsel of the District of Columbia. (Sept. 19, 1918, 40 Stat. 963, ch. 174, title I, § 14; Oct. 15, 1966, 80 Stat. 969, Pub. L. 89–684; § 1; July 29, 1970, Pub. L. 91–358, Title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of act July 29, 1970, Pub. L. 91–358, struck out "District of Columbia Court of General Sessions" and inserted in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding § 11–101.

§ 36–415. Employee remedies—Liability of employer—Liquidated damages—Actions—Parties—Attorney fees and costs—Defenses—Assignment of claim—Supervision of payment—Waiver.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SUBCHAPTER II.—INDUSTRIAL SAFETY

§ 36–432. Definitions.

When used in this subchapter, the following words shall have the following meanings, unless the context clearly requires otherwise:

(a) "Employer" includes every person, firm, corporation, partnership, stock association, agent, manager, representative, or foreman, or other persons having control or custody of any place of employment or of any employee. It shall not include the District of Columbia or any instrumentality thereof, or the United States or any instrumentality thereof.

(b) "Board" means the Minimum Wage and Industrial Safety Board.

(c) "Safe" and "safety" as applied to an employment, a device, or a place of employment, including facilities of sanitation and hygiene, mean such freedom from danger to life or health of employees as circumstances reasonably permit, and shall not be given restrictive interpretation so as to exclude any mitigation or prevention of a specific danger.

(d) "Place of employment" means any place where employment is carried on: *Provided, however,* That such term shall not include the premises of any Federal or District of Columbia establishment, except to include any and all work of whatever nature being performed by an independent contractor for the United States Government or any instrumentality thereof or the District of Columbia or any instrumentality thereof.

(Sept. 19, 1918, ch. 174, title II, § 2, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; Jan. 5, 1971, Pub. L. 91–650, title V, § 501(1), 84 Stat. 1936.)

AMENDMENT

1971—Section 501(1) of act Jan. 5, 1971, Pub. L. 91–650, amended section—

(A) by striking out in paragraph (a) "industrial employment, place of employment," and inserting in lieu thereof "place of employment", and

(B) by striking out in paragraph (d) "industrial".

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 301–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

§ 36–433. Additional duties of Board under this subchapter.

The Board, in addition to its duties defined in subchapter I shall administer the provisions of this subchapter and shall have power to make such inspections and investigations as it may deem necessary; collect and compile statistical information; require employers to keep their places of employment reasonably safe; require employers to keep such records as it may deem advisable and to furnish the Board with complete, detailed reports relative to all accidents; determine and fix reasonable standards of safety in employment, places of employment, in the use of devices and safeguards, and in the use of practices, means, methods, operations, and processes of employment; promulgate general rules and regulations based upon such standards and fix the minimum safety requirements which shall be complied with by employers within the purview of this subchapter. To promote the safety of persons employed in existing buildings or other existing structures, such rules, regulations, and standards may require, without limitation, changes in the permanent or temporary features of such buildings or other structures. (Sept. 19, 1918, ch. 174, title II, § 3, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; Jan. 5, 1971, Pub. L. 91–650, title V, § 501(2), 84 Stat. 1936.)

AMENDMENT

1971—Section 501(2) of act Jan. 5, 1971, Pub. L. 91–650, added at the end of the section a new sentence to read as above set out.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(283) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in the particulars described in par. 283, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 36–434. Rules and regulations—Public hearing—Publication—Effective date.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(284) of Reorg. Plan No. 3 of 1967. effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to adopting and promulgating rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 36–435. Authority to take testimony—Subpoena.

Any member of the Board shall have power to administer oaths and the Board may require by subpoena the attendance and testimony of witnesses, the production of all books, registers, and other evidence relative to any matters under investigation, at any public hearing, or at any session or any conference held by the Board. In case of disobedience to a subpoena the Board may invoke the Superior Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of documentary evidence. In the case of contumacy or refusal to obey a subpoena, the court may issue an order requiring appearance before the Board, the production of documentary evidence and the giving of evidence touching the matter in question, and any failure to obey such order of the court may be punished by such court as a contempt

thereof. (Sept. 19, 1918, ch. 174, title II, § 5, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3, and amended June 25, 1948, 62 Stat. 991, ch. 646, § 232(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(38), 84 Stat. 572.)

AMENDMENT

1970—Section 155(c)(38) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 36–436. Variations by employers from regulations.

The Board may, upon written application of any employer affected by such rule or regulation, permit variations from any provisions thereof if it shall find that the application of such provision would result in unnecessary hardship or practical difficulty, and notwithstanding such variance, that the protection afforded by such rule or regulation will be provided. The Board may grant a hearing open to the public on such application upon request of the applicant or other interested party or parties, or on its own initiative. The Board's decision thereon shall be subject to review by the District of Columbia Court of Appeals upon petition of the applicant or other affected party or parties. The Board shall keep a properly indexed record of all variations permitted from any rule or regulation, which shall be open to public inspection. (Sept. 19, 1918, ch. 174, title II, § 6, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3; Jan. 5, 1971, Pub. L. 91–650, title V, § 501(3), 84 Stat. 1936.)

AMENDMENT

1971—Section 501(3) of act Jan. 5, 1971, Pub. L. 91–650, amended section to read as above set out. For provisions of section before this amendment, see 1967 edition of the code.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

§ 36–440. Office space and supplies for Board.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 36–441. Annual report to Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 36–442. Penalties for violations of subchapter—Jurisdiction.

Whoever violates any of the provisions of this subchapter, or any rules or regulations promulgated hereunder, shall be deemed guilty of a misdemeanor; and, upon conviction thereof, shall be punished by a fine of not less than $100 or more than $600, or by imprisonment of not exceeding ninety days. Prosecutions for violations of this subchapter shall be in the name of the District of Columbia on information filed in the Superior Court of the District of Columbia by the corporation counsel or one of his assistants. (Sept. 19, 1918, ch. 174, title II, § 12, as added Oct. 14, 1941, 55 Stat. 738, ch. 438, § 3, and amended Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570; Jan. 5, 1971, Pub. L. 91–650, title V, § 501(4), 84 Stat. 1936.)

AMENDMENTS

1971—Section 501(4) of act Jan. 5, 1971, Pub. L. 91–650, struck out "more than $300" and inserted in lieu thereof "less than $100 or more than $600".

1970—Section 155(a) of act July 29, 1970, Pub. L. 91–358, struck out "District of Columbia Court of General Sessions" and inserted in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding § 11–101.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

Chapter 5.—WORKMEN'S COMPENSATION

§ 36–501. Longshoremen's and Harbor Workers' Compensation Act made applicable to District of Columbia.

The provisions of chapter 18 of title 33, U.S. Code, including all amendments that may hereafter be made thereto, shall apply in respect to the injury or death of an employee of an employer carrying on any employment in the District of Columbia, irrespective of the place where the injury or death occurs; except that in applying such provisions the term "employer" shall be held to mean every person carrying on any employment in the District of Columbia, and the term "employee" shall be held to mean every employee of any such person. (May 17, 1928, 45 Stat. 600, ch. 612, § 1.)

CODIFICATION

This section is set out in this supplement to correct a typographical error in the 1967 edition of the code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–438, 46–303.

NOTES TO DECISIONS

Aggravation of illness

Aggravation of a pre-existing condition may constitute compensable accidental injury under Longshoremen's and Harbor Workers' Compensation Act. *M. R. Wheatley* v. *H. Adler, Deputy Commissioner, etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

Basis for rejection of claim

The rejection of a workmen's compensation claim for the death of an employee occurring during the course of employment cannot be supported as matter of law unless record contains substantial evidence showing that the death did not arise out of employment. *M. R. Wheatley* v. *H. Adler, Deputy Commissioner, etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

Commissioner's finding of fact

The findings of a deputy commissioner in proceedings under the Longshoremen's and Harbor Workers' Act must be accepted as true unless they are not supported by substantial evidence on the record considered as a whole and may be set aside only if not in accordance with law. *A. E. Van Devander and W. L. Massey* v. *Heller Electric Co., Inc., et al.* (1968, 405 F. 2d 1108, 132 U.S. App. D.C. 40).

Construction

In order to bring a claimant within ambit of Longshoremen's and Harbor Workers' Act affording compen-

sation for accidental injury or death arising out of and in course of employment there is a requirement that there be a continuity of cause, combined with continuity in time and space. *A. E. Van Devander and W. L. Massey* v. *Heller Electric Co., Inc., et al.* (1968, 405 F. 2d 1108, 132 U.S. App. D.C. 40).

Longshoremen's and Harbor Workers' Compensation Act are required to be construed liberally in favor of employees and their dependents and it is in their favor that doubts, including the factual, are to be resolved. *M. R. Wheatley* v. *H. Adler, Deputy Commissioner, etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

Administrative findings in workmen's compensation case will not be sustained merely because they are substantiated by some isolated evidence and court's review must take account of settled rule that Longshoremen's and Harbor Workers' Compensation Act is to be construed with view to its beneficent purposes. *Id.*

Contribution to a tort-feasor

Private employers in District of Columbia whose employees are within protection of the Longshoremen's and Harbor Workers' Compensation Act may not be compelled to contribute to a tort-feasor held liable to the employee. *J. S. Murray* v. *United States* (1968, 405 F. 2d 1361, 132 U.S. App. D.C. 91).

Course of employment

Accidents and death occurring while an employee is on his way to or from toilet facilities or while he is engaged in relieving himself, generally arise within course of employment for workmen's compensation purposes, subject to possible question of reasonableness of means or place chosen. *M. R. Wheatley* v. *H. Adler, Deputy Commissioner etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

Evidence—Sufficiency

There was sufficient evidence to support the findings of deputy commissioner, in proceedings under Longshoremen's and Harbor Workers' Act, that injuries suffered by claimant when he fell asleep from fatigue while driving home after work were attributable to claimant's lack of sleep due to unusually long hours of work installing heavy electrical equipment and that such injuries arose out of and in the course of his employment. *A. E. Van Devander and W. L. Massey* v. *Heller Electric Co., Inc., et al.* (1968, 405 F. 2d 1108, 132 U.S. App. D.C. 40).

Exposure to hazards

It does not matter, for purposes of workmen's compensation award, that decedent employee was exposed to no more than ordinary hazards of working and living at the time he sustained fatal heart attack or that same kind of injury might have occurred wherever he might have been. *M. R. Wheatley* v. *H. Adler, Deputy Commissioner etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

Extent of stress required

Unusual stress is not required for an award for injury sustained by an employee during the course of his employment and award should be granted so long as death or injury results from activity in course of his employment. *M. R. Wheatley* v. *H. Adler, Deputy Commissioner etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

Payment of retirement and compensation benefits

Retirement benefits under pension system were payable over and above compensation awarded under Longshoremen's and Harbor Workers' Compensation Act, where Act made invalid any agreement requiring employee to contribute to a fund for providing compensation or to waive his right to compensation, and pension plan provided that allowances were in addition to workmen's compensation benefits. *W. Massey and W. G. White* v. *D.C. Transit System, Inc.* (1967, 388 F. 2d 584, 128 U.S. App. D.C. 328).

Presumption

The fact that injury or death occurs in course of employment strengthens presumption that it arises out of employment, with doubts resolved in claimant's favor. *M. R. Wheatley* v. *H. Adler, Deputy Commissioner, etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

Rebuttal of presumption

The evidence did not dispel the statutory presumption that an employee, who was shown by autopsy report to have been suffering from marked arteriosclerotic heart disease, whose death resulted from myocardial insufficiency and who collapsed after urinating outside employer's building in cold weather, came within provisions of Longshoremen's and Harbor Workers' Compensation Act. *M. R. Wheatley* v. *H. Adler, Deputy Commissioner, etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

Visible injury

An accidental injury may occur, within workmen's compensation law notwithstanding the injured employee has been engaged in his usual and ordinary activity and injury need not be external but it is enough if something unexpectedly goes wrong within the human frame. *M. R. Wheatley* v. *H. Adler, Deputy Commissioner etc., et al.* (1968, 407 F. 2d 307, 132 U.S. App. D.C. 177).

§ 36–502. Exceptions.

This chapter shall not apply in respect to the injury or death of (1) a master or member of a crew of any vessel; (2) an employee of a common carrier by railroad when engaged in interstate or foreign commerce or commerce solely within the District of Columbia; (3) an employee subject to the provisions of section 7902 and subchapter I of chapter 81 of title 5, U.S. Code, and sections 292 and 1920–1922 of title 18 U.S. Code and (4) an employee engaged in agriculture, domestic service, or any employment that is casual and not in the usual course of the trade, business, occupation, or profession of the employer; and (5) any secretary, stenographer, or other person performing any services in the office of any Member of Congress or under the direction, employment, or at the request of any Member of Congress, within the scope of the duties performed by secretaries, stenographers, or such employees of Members of Congress. (May 17, 1928, 45 Stat. 600, ch. 612, § 2; June 15, 1938, 52 Stat. 689, ch. 392.)

CODIFICATION

This section is set out in the supplement to correct an error therein, as it appears in the 1967 edition of the code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36–438.

Chapter 6.—PAYMENT AND COLLECTION OF WAGES

§ 36–601. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(285) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (b) with respect to promulgating regulations defining and delimiting the term "any person employed in a bona fide executive, administrative, or professional capacity," to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 36–602. When wages must be paid—Exceptions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 36–603, 36–604, 36–607.

§ 36–604. Unconditional payment of wages conceded to be due.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 36–607.

§ 36–606. Enforcement, records and subpenas.

* * * * *

(c) In case of failure of any person to comply with any subpena lawfully issued, or on the refusal of any witness to testify to any matter regarding which he may be lawfully interrogated, it shall be the duty of the Superior Court of the District of Columbia or any judge thereof, on application by the Commissioners, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpena issued from such court or a refusal to testify therein. (As amended July 29, 1970, Pub. L. 91–358, title I, § 155 (a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of act July 29, 1970, Pub. L. 91–358, amended subsec. (c) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding § 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 36–608. Employees' remedies.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 36–609. Commissioners may delegate functions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TITLE 37.—LIBRARIES

Chapter 1.—PUBLIC LIBRARIES

§ 37–101. Public library established—Authority of Commissioners—Acceptance of gifts.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

Library Services and Construction Act, see 20 U.S.C. 351 et seq.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 37–102, 37–103.

§ 37–102. Branch libraries.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 37–103.

§ 37–104. Board of trustees—Appointment and tenure.

TRANSFER OF FUNCTIONS OF THE BOARD OF COMMISSIONERS

Section 501 of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"Status of certain agencies. (a) Functions now vested in any agency listed in subsection (b) of this section, or in any officer or body of or under such agency, shall remain so vested; but all functions of the Board of Commissioners of the District of Columbia and all functions of the President of that Board or of any other member of the Board, relating to the listed agency or its functions or to an officer or body thereof or to the functions of such officer or body shall be deemed to be transferred by part IV of this reorganization plan.

"(b) The following agencies of the Corporation are the agencies referred to in subsection (a) of this section:

"(1) Board of Education (including the public school system)

"(2) Board of Library Trustees (including the public libraries)

"(3) Recreation Board

"(4) Public Service Commission

"(5) Zoning Commission

"(6) Zoning Advisory Council

"(7) Board of Zoning Adjustment

"(8) Office of the Recorder of Deeds

"(9) Armory Board"

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 37–103.

§ 37–105. Duties—Librarian and employees—Annual report.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 37–103.

§ 37–106. Submission of estimates.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 37–103.

§ 37–109. Transfer of miscellaneous books to District public library.

CODIFICATION

Section is also classified to 40 U.S.C. § 484–1.

TITLE 38.—LIENS

Chapter 1.—MECHANICS, MATERIALMEN, AND CONTRACTORS

§ 38–104. Conditions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 38–103, 38–209.

NOTES TO DECISIONS

Owners liability to subcontractor

Where 23% of each progress report certified by architect was chargeable against down payment and note to be delivered and to begin to be due when warehouse construction work was completed and lender paid remaining 77% of amounts shown on the first ten of eleven certified progress requisitions and where owners terminated the contract, the down payment and note at least negated further obligations of owners in those amounts, and owners thus owed general contractor nothing when subcontractors filed mechanics' liens, after termination of contract, pursuant to District of Columbia statute providing in effect that if owner owes general contractor nothing subcontractors can collect nothing by mechanics' liens. *Washington Concrete Sales Corporation, Inc., and R. L. Walutes etc.* v. *A. E. Morrisette et al.* (1966, 377 F. 2d 137, 126 U.S. App. D.C. 252).

Evidence supported finding that owners, sued by subcontractors for enforcement of mechanics' liens filed under District of Columbia statute providing in effect that if owner owes general contractor nothing subcontractors can collect nothing, had completed building at cost higher than original contract price after terminating the contract. *Id.*

§§ 38–105, 38–106.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 38–103.

§ 38–107. Subcontractor entitled to know terms of contract.

NOTES TO DECISIONS

Evidence of notice to subcontractors

Evidence supported finding that owners had advised subcontractors seeking to enforce mechanics' liens as to terms of warehouse construction contract, status of payments, etc., in accordance with District of Columbia statute. *Washington Concrete Sales Corporation, Inc., and R. L. Walutes etc.* v. *A. E. Morrisette et al.* (1966, 377 F. 2d 137, 126 U.S. App. D.C. 252).

§ 38–108. Advance payments.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 38–103.

§ 38–109. Priority of lien.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 38–103.

NOTES TO DECISIONS

Mechanics Lien

The relation back preference of mechanic's lien does not affect the priority of a recorded purchase-money deed of trust, a priority that exceeds even that of a previous judgment. *Guardian Federal Savings & Loan Association* v. *H. P. Suskind* (D.C. App. 1970, 265 A. 2d 295).

Priority to surplus on foreclosure

In this case, the court held that the holder of purchase-money deed of trust (containing provision that it should be subordinate to any construction loan and all advances made under construction loan) is entitled, on foreclosure of first deed of trust held by construction lender, to priority with respect to surplus remaining after satisfaction of construction lender's debt and payment of foreclosure expenses, notwithstanding construction lender's claim to surplus to satisfy mechanic's lien it had paid against property. *Guardian Federal Savings & Loan Association* v. *H. P. Suskind* (D.C. App. 1970, 265 A. 2d 295).

§ 38–110. How lien enforced.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 38–103, 38–123.

§§ 38–111 to 38–122.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 38–103.

§ 38–124. Artisans' lien.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 38–125.

§ 38–125. Enforcement by sale.

If the amount due and for which a lien is given by section 38–124 is not paid after the end of a month after the same is due, and the property bound by said lien does not exceed the sum of fifty dollars, then the party entitled to such lien, after demand of payment upon the debtor, if he be within the District, may proceed to sell the property so subject to lien at public auction, after giving notice once a week for three successive weeks in some daily newspaper published in the District, and the proceeds of such sale shall be applied, first, to the expenses of such sales and the discharge of such lien, and the remainder, if any, shall be paid over to the owner of the property. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1263; redesignated § 1261 and amended Dec. 8, 1970, Pub. L. 91–537, § 4(a), 84 Stat. 1397.)

AMENDMENT

1970—Section 4(a) of act Dec. 8, 1970, Pub. L. 91–537, redesignated section 1263 of the act of Mar. 3, 1901, as section "1261"; and struck out of the section redesignated as section 1261 the words "by any of the last three sections" and inserted in lieu thereof "by section 1260 [§ 38–124]".

§ 38–126. Enforcement by bill in equity.

If the value of the property so subject to lien shall exceed the sum of fifty dollars, the proceeding to enforce such lien shall be by bill or petition in equity, and the decree, which shall be rendered according to the due course of proceedings in equity, besides subjecting the thing upon which the lien was attached to sale for the satisfaction of the plaintiff's demand, shall adjudge that the plaintiff recover his demand against the defendant from whom such claim is due,

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and may have execution therefor as at law. (Mar. 3, 1901, 31 Stat. 1388, ch. 854, § 1264; redesignated § 1262 Dec. 8, 1970, Pub. L. 91–537, § 4(a)(1), 84 Stat. 1397.)

AMENDMENT

1970—Section 4(a)(1) of act Dec. 8, 1970, Pub. L. 91–537, redesignated section 1264 of the act of Mar. 3, 1901, as section "1262".

Chapter 2.—GARAGE KEEPERS AND LIVERYMEN

§ 38–201. Repealed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 38–209.

§§ 38–202, 38–203. Repealed. Dec. 8, 1970, Pub. L. 91–537, § 4(a), 84 Stat. 1397.

Sections, act Mar. 3, 1901, 31 Stat. 1388, ch. 854, §§ 1263 and 1264 (as applicable to § 1262), provided for enforcement of the lien of garage keepers and liveryment by sale and by bill in equity. The amendment made by section 4(a)(2) of Pub. L. 91–537 had the effect of repealing sections 1263 and 1264 of the 1901 act as they applied to section 1262.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 38–209.

§ 38–204. Lien of liverymen.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 38–206, 38–209.

§ 38–205. Lien for storage, repairs and supplies for motor vehicles.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 38–206, 38–208, 38–209.

§ 38–209. Liens acquired under prior law.

Section 38–201 is hereby repealed and sections 38–202 and 38–203 are hereby made inapplicable to liens provided for in sections 38–204 and 38–205 hereof: *Provided, however,* That any liens heretofore acquired under the provisions of said section 38–201, shall be unaffected by the repeal of said section and may be enforced either in the manner provided in said sections 38–202 and 38–203 or in the manner provided herein. (June 3, 1952, 66 Stat. 98, ch. 361, § 6.)

REFERENCE IN TEXT

Sections 38–202 and 38–203, referred to in the text, were in effect repealed by the provisions of section 4(a)(2) of act Dec. 8, 1970, Pub. L. 91–537.

PRESIDENTIAL EXECUTIVE ORDER 11485

SUPERVISION AND CONTROL OF THE NATIONAL GUARD OF THE DISTRICT OF COLUMBIA

Ex. Ord. No. 11485, Oct. 1, 1969, 34 F.R. 15411, 15443

By virtue of the authority vested in me as President of the United States and Commander-in-Chief of the Armed Forces of the United States and the National Guard of the District of Columbia under the Constitution and laws of the United States, including section 6 of the Act of March 1, 1889, 25 Stat. 773 (District of Columbia Code, sec. 39–112), and section 110 of title 32 and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense, except as provided in section 3, is authorized and directed to supervise, administer and control the Army National Guard and the Air National Guard of the District of Columbia (hereinafter "National Guard") while in militia status. The Commanding General of the National Guard shall report to the Secretary of Defense or to an official of the Department of Defense designated by the Secretary on all matters pertaining to the National Guard. Through the Commanding General, the Secretary of Defense shall command the military operations, including training, parades and other duty, of the National Guard while in militia status. Subject to the direction of the President as Commander-in-Chief, the Secretary may order out the National Guard under title 39 of the District of Columbia Code to aid the civil authorities of the District of Columbia.

SEC. 2. The Attorney General is responsible for: (1) advising the President with respect to the alternatives available pursuant to law for the use of the National Guard to aid the civil authorities of the District of Columbia; and (2) for establishing after consultation with the Secretary of Defense law enforcement policies to be observed by the military forces in the event the National Guard is used in its militia status to aid civil authorities of the District of Columbia.

SEC. 3. The Commanding General and the Adjutant General of the National Guard will be appointed by the President. The Secretary of Defense, after consultation with the Attorney General, shall at such times as may be appropriate submit to the President recommendations with respect to such appointments.

SEC. 4. The Secretary of Defense and the Attorney General are authorized to delegate to subordinate officials of their respective Departments any of the authority conferred upon them by this order.

SEC. 5. Executive Order No. 10030 of January 26, 1949, is hereby superseded.

Chapter 1.—COMPOSITION, ORGANIZATION, AND CONTROL

§ 39–102. Exemptions from service.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 39–101.

§ 39–103. Assessors to make list of persons liable to enrollment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 39–107. Repealed. Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53.

Section, acts June 3, 1916, 39 Stat. 197, ch. 134, § 60; June 4, 1920, 41 Stat. 780, ch. 227, subch. I, § 36; June 15, 1933, 48 Stat. 156, ch. 87, § 6, which related to organization of National Guard units, which had superseded act Mar. 1, 1889, 25 Stat. 774, ch. 328, § 11, as amended by act Feb. 18, 1909, 35 Stat. 629, ch. 146, is now covered by 32 U.S.C § 104.

§ 39–108. Reserve corps—Organization—Composition.

CODIFICATION

Section 74 of 1909 act made act Jan. 21, 1903, 32 Stat. 775 applicable to the District of Columbia; but this act had been superseded by the National Defense Act of June 3, 1916, 39 Stat. 166, ch. 134. The National Defense Act of June 3, 1916, was in turn repealed by act Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53 (this act enacted into law many of its provisions) and it is now covered by titles 10 and 32 of the U.S. Code. See tables in the U.S. Code.

§§ 39–109, 39–110. Repealed. Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53.

Section 39–109, act May 12, 1917, 40 Stat. 72, ch. 12, as amended by acts July 1, 1947, 61 Stat. 238, ch. 192, § 1(a); July 9, 1952, 66 Stat. 506, ch. 608, pt. VIII, § 804(a), which related to leaves of absence for employees of the United States and the District of Columbia who were members of the reserve components of the Armed Forces, is now covered by 5 U.S.C. §§ 502, 2105, 3551, 5534, 6323. See, particularly, 5 U.S.C. § 6323.

Section 39–110, act May 12, 1917, 40 Stat. 72, ch. 12, as amended by acts July 1, 1947, 61 Stat. 238, ch. 192, § 1(a); July 9, 1952, 66 Stat. 506, ch. 608, pt. VIII, § 804(a), which related to restoration of employees of the United States and the District of Columbia, who were members of the reserve components of the Armed Forces, to their government positions, when relieved from duty in such components, is now covered by 5 U.S.C. §§ 502, 2105, 3551, 5534, 6323. See, particularly, 5 U.S.C. § 3551.

§ 39–111. Disbanding companies below minimum strength.

CODIFICATION

In first sentence, words ", with the consent of the President," were inserted after "the commanding general may" on authority of a proviso in § 68 of act June 3, 1916, cited as one of the sources of this section, which read: *"Provided,* That no organization of the National Guard, members of which shall be entitled to and shall have received compensation under the provisions of this act, shall be disbanded without the consent of the President, nor, without such consent, shall the commissioned or enlisted strength of any such organization be reduced below the minimum that shall be prescribed therefor by the President.". Section 68 was repealed in its entirety by act Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53, and, including the quoted proviso, is now covered by 32 U.S.C. § 104. See, particularly, subsec. (f) thereof.

Section 14 of act Mar. 1, 1889, 25 Stat. 774, ch. 328, fixed the minimum number of enlisted men in any company at forty. That section was repealed by act Feb. 18, 1909, 35 Stat. 630, ch. 146. It was considered that § 11 of act Mar. 1, 1889, 25 Stat. 774, as amended by act Feb. 18, 1909, 35 Stat. 629, which related to composition of the National Guard, was intended to supersede repealed § 14, but § 11 was later superseded by § 60 of act June 3, 1916, 39 Stat. 197, ch. 134 (National Defense Act). The latter, however, which was formerly classified to § 39–107 and to 32 U.S.C. former § 5, has been repealed and is now covered by 32 U.S.C. § 104. See note under former § 39–107.

Chapter 2.—COMMISSIONED OFFICERS

§ 39–201. Commanding general—Appointment and removal—Rank.

(a) There shall be appointed and commissioned by the President of the United States a commanding general of the militia of the District of Columbia with the rank of brigadier-general, or major general, who shall hold office until his successor is

appointed and qualified, but may be removed at any time by the President.

(b) Except as provided in subsection (c), any person serving as the commanding general of the militia of the District of Columbia shall be considered to be an employee of the Department of Defense, and of the United States, within the meaning of section 2105 of title 5, United States Code.

(c) Any officer of the Armed Forces of the United States who, while serving on active duty, is detailed to serve as commanding general of the militia of the District of Columbia shall, while so detailed, be entitled to receive only the pay and allowances to which he is entitled as an officer of the Armed Forces. (Mar. 1, 1889, 25 Stat. 773, ch. 328, § 7; Sept. 2, 1957, 71 Stat. 596, Pub. L. 85–270, § 1; June 30, 1970, Pub. L. 91–297, title V, § 501(a), 84 Stat. 366.)

CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146, amended act Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

AMENDMENTS

1970—Section 501(a) of Pub. L. 91–297 inserted the designation "(a)" at the beginning of the section and added subsections (b) and (c).

1957—Section 1 of Pub. L. 85–270 inserted "or major general."

EFFECTIVE DATE OF 1970 AMENDMENT

Section 501(c) of Pub. L. 91–297 provided: "The amendment made by this section [to sec. 39–201] shall take effect on the first day of the first pay period beginning on or after the date of enactment of this title [June 30, 1970]."

CROSS REFERENCES

See U.S. Code, title 32.
Power to make rules and regulations, see § 39–905.
President as Commander-in-Chief, see § 39–112.

§ 39–202. Staff officers—Appointment and removal—Noncommissioned staff.

CODIFICATION

As enacted by the act of Mar. 1, 1889, this section, after "President" at end of first sentence, contained the additional words: ", and hold office until their successors are appointed and qualified, but may be removed at any time by the President"; and, after "adjutant-general,", near beginning of second sentence, contained the words: "with the rank of lieutenant colonel,". These words were omitted from this section because apparently affected by a proviso in § 66 of act June 3, 1916, cited as one of the sources hereof, which read: *"Provided,* That the adjutants general of the Territories and of the District of Columbia shall be appointed by the President with such rank and qualifications as he may prescribe, and each adjutant general for a Territory shall be a citizen of the Territory for which he is appointed.", and which was classified to 32 U.S.C. former § 12. § 66 of act June 3, 1916 was repealed in its entirety by act Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53, and is now covered by 32 U.S.C. § 314. See, particularly, subsec. (b) thereof.

§ 39–203. Qualifications of staff officers—Tenure—Vacancies.

CODIFICATION

The paragraph of act July 11, 1919, 41 Stat. 127, ch. 8, classified to this section, contained an introductory clause as follows: "That to comply with the provisions of section 110, of the act entitled 'An Act for making further and more effectual provision for the national defense, and for other purposes,' approved June 3, 1916 [39 Stat. 209, ch. 134], it is hereby provided that staff officers" [etc.]. § 110 of act June 3, 1916, was repealed by act Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53, and is now covered by 32 U.S.C. §§ 303, 322, 323, 710; see, also, 31 U.S.C. § 698a, and 37 U.S.C. §§ 201, 203, 204, 206, 402, 414–417, 301, 309, 1002.

CREDIT LINE

The correct citation of the source of this section is "July 11, 1919, ch. 8, 41 Stat. 127."

§ 39–205. Omitted.

CODIFICATION

Section, as enacted by act June 6, 1900, 31 Stat. 671, ch. 811, which was also classified to 10 U.S.C. former § 998, provided that the "President of the United States may detail as adjutant-general of the District of Columbia Militia any retired officer of the Army who may be nominated to the President by the brigadier-general commanding the District of Columbia Militia, said retired officer while so detailed to have the active service pay and allowances of his rank in the Regular Army." Although it was amended by act Sept. 2, 1957, 71 Stat. 596, Pub. L. 85–270, § 2, to substitute "commanding general of" for "brigadier-general commanding", it previously had been repealed by act Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53, having since been covered by 32 U.S.C. § 314(c), which also uses the term "commanding general", rather than the prior term "brigadier-general". As it is considered that the amendment of this repealed section by act Sept. 2, 1957, was an oversight, and that in any event this section is now covered by 32 U.S.C. § 314(c), this section is omitted from this Code.

Chapter 4.—ENLISTED PERSONNEL

§§ 39–401 to 39–403. Repealed. Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53.

Section 39–401, acts June 3, 1916, 39 Stat. 200, ch. 134, § 69; July 11, 1919, 41 Stat. 127, ch. 8; June 4, 1920, 41 Stat. 781, ch. 227, subch. I, § 37; June 6, 1924, 43 Stat. 470, ch. 275, § 4; June 15, 1933, 48 Stat. 156, ch. 87, § 7; July 9, 1952, 66 Stat. 506, ch. 608, pt. VIII, § 806(a), which related to terms of enlistments in the National Guard and reenlistments, which superseded act Mar. 1, 1889, 25 Stat. 775, ch. 328, § 26, as amended by act Feb. 18, 1909, 35 Stat. 632, ch. 146, § 23, relating to the same subject, is now covered by 32 U.S.C. § 302.

Section 39–402, acts June 3, 1916, 39 Stat. 201, ch. 134, § 70; June 4, 1920, 41 Stat. 781, ch. 227, subch. I, § 38; June 15, 1933, 48 Stat. 156, ch. 87, § 8; June 19, 1935, 49 Stat. 391, ch. 277, § 3; July 9, 1952, 66 Stat. 506, ch. 608, pt. VIII, § 806(b), which related to enlistment contract and oath of enlistment, which superseded act Mar. 1, 1889, 25 Stat. 776, ch. 328, § 27, as amended by act Feb. 18, 1909, 35 Stat. 632, ch. 146, relating to the same subject, is now covered by 32 U.S.C. § 304.

Section 39–403, acts June 3, 1916, 39 Stat. 201, ch. 134, § 72; June 4, 1920, 41 Stat. 781, ch. 227, subch. I, § 40; June 15, 1933, 48 Stat. 157, ch. 87, § 10; July 9, 1952, 66 Stat. 507, ch. 608, pt. VIII, § 806(d), which related to form and classification of discharge of an enlisted man from National Guard, and discharges in time of peace, which superseded act Mar. 1, 1889, ch. 328, §§ 28, 30, as amended by Act Feb. 18, 1909, 35 Stat. 632, ch. 146, relating to the same subject, is now covered by 32 U.S.C. § 322.

Chapter 5.—ARMAMENT, EQUIPMENT, AND SUPPLIES

§ 39–501. Uniform, arms, and equipment—Issuance by Department of the Army.

CODIFICATION

Act Feb. 18, 1909, 35 Stat. 629, ch. 146, amended act Mar. 1, 1889, 25 Stat. 772, ch. 328. Some of the sections of the 1889 act were repealed, some amended, and others were entirely new sections added by the act of 1909. In the history lines of this chapter, the section number of the 1889 act refers to the section of the original act as it appears in 25 Stat. 772 et seq. The section number in the 1909 act in the history line refers to the section of the 1889 act as amended by later act and shows the new number and wording of the section as it is found in 35 Stat. 629 et seq.

Section 36 of act Mar. 1, 1889, 25 Stat. 777, ch. 328, which was renumbered "39", without further amendment, by act Feb. 18, 1909, 35 Stat. 634, ch. 146, provided: "That property issued or provided under the provisions of this act which becomes unfit for use, and is condemned as unserviceable shall be reported by the commanding general to the Secretary of War, and shall be disposed of as may be directed by him.". That section is deemed to have been superseded by act June 3, 1916, 39 Stat. 204 (National Defense Act of 1916), ch. 134, § 87, as amended by acts June 3, 1924, 43 Stat. 363, ch. 244, § 1; Feb. 28, 1925, 43 Stat. 1077, ch. 371, § 4; Aug. 27, 1954, 68 Stat. 880, ch. 1014, which was repealed by act Aug. 10, 1956, 70A Stat. 641, ch. 1041, § 53, and is now covered by 32 U.S.C. § 710.

§ 39–505. Penalty for selling, pawning, injuring, or retaining public property.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 39–511.

§ 39–513. Right to own personal property—Actions for injuries.

Organizations of the National Guard shall have the right to own and keep personal property, which shall belong to and be under the control of the active members thereof; and the commanding officer of any organization may recover for its use any debts or effects belonging to it, or damages for injury to such property; action for such recovery to be brought in the name of such commanding officer, before the court in the District of Columbia having jurisdiction of the amount in controversy, and no suit or complaint pending in his name shall be abated by his ceasing to be commanding officer of the organization; but, upon the motion of the commander succeeding him, such commander shall be admitted to prosecute the suit or complaint in like manner and with like effect as if it had been originally commenced by him. (Mar. 1, 1889, 25 Stat. 777, ch. 328, § 38; Feb. 18, 1909, 35 Stat. 634, ch. 146, § 41; Feb. 17, 1909, 35 Stat. 623, ch. 134; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 157(i), 84 Stat. 575.)

AMENDMENT

1970—Section 157(i) of Act of July 29, 1970, Public Law 91–358 amended section by striking out "any justice of the peace, with the right of appeals to the United States District Court for the District of Columbia, or before the United States District Court for the District of Columbia" and inserting in lieu thereof "the court in the District of Columbia having jurisdiction of the amount in controversy."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 6.—ACTIVE MILITARY DUTY

PRESIDENTIAL EXECUTIVE ORDER 11485

SUPERVISION AND CONTROL OF THE NATIONAL GUARD OF THE DISTRICT OF COLUMBIA

Ex. Ord. No. 11485, Oct. 1, 1969, 34 F.R. 15411, 15443

By virtue of the authority vested in me as President of the United States and Commander-in-Chief of the Armed Forces of the United States and the National Guard of the District of Columbia under the Constitution and laws of the United States, including section 6 of the Act of March 1, 1889, 25 Stat. 773 (District of Columbia Code, sec. 39–112), and section 110 of title 32 and section 301 of title 3 of the United States Code, it is hereby ordered as follows:

SECTION 1. The Secretary of Defense, except as provided in section 3, is authorized and directed to supervise, administer and control the Army National Guard and the Air National Guard of the District of Columbia (hereinafter "National Guard") while in militia status. The Commanding General of the National Guard shall report to the Secretary of Defense or to an official of the Department of Defense designated by the Secretary on all matters pertaining to the National Guard. Through the Commanding General, the Secretary of Defense shall command the military operations, including training, parades and other duty, of the National Guard while in militia status. Subject to the direction of the President as Commander-in-Chief, the Secretary may order out the National Guard under title 39 of the District of Columbia Code to aid the civil authorities of the District of Columbia.

SEC. 2. The Attorney General is responsible for: (1) advising the President with respect to the alternatives available pursuant to law for the use of the National Guard to aid the civil authorities of the District of Columbia; and (2) for establishing after consultation with the Secretary of Defense law enforcement policies to be observed by the military forces in the event the National Guard is used in its militia status to aid civil authorities of the District of Columbia.

SEC. 3. The Commanding General and the Adjutant General of the National Guard will be appointed by the President. The Secretary of Defense, after consultation with the Attorney General, shall at such times as may be appropriate submit to the President recommendations with respect to such appointments.

SEC. 4. The Secretary of Defense and the Attorney General are authorized to delegate to subordinate officials of their respective Departments any of the authority conferred upon them by this order.

SEC. 5. Executive Order No. 10030 of January 26, 1949, is hereby superseded.

§ 39–603. Suppression of riots.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 39–608. Repealed. Sept. 6, 1966, Pub. L. 89–554, § 8(a), 80 Stat. 632; Oct. 22, 1968, Pub. L. 90–623, § 7(a)(1), 82 Stat. 1315.

The first sentence of this former section, act Mar. 1, 1889, 25 Stat. 779, ch. 328, § 49, renumbered as § 52 of such act, without further amendment, by act Feb. 18, 1909, 35 Stat. 629 (634), ch. 146, provided for leaves of absence for officers and employees of the United States and District of Columbia, who were members of the National Guard, to attend parades and encampments. It was repealed as §"49" of the 1889 act, without citation of said amendatory act of Feb. 18, 1909, by act Sept. 6, 1966, 80 Stat. 632, Pub. L. 89–554, § 8(a). Prior to the repeal, such sentence had been superseded by act Aug. 10, 1956, 70 Stat. 632, ch. 1041, § 29, [See however, p. 5 of Report No. 1721, issued in connection with H.R. 17864, now Pub. L. 90–623 in relation to enactment of title 5 U.S.C. § 6323(c).] which, in turn, was also repealed by said § 8(a) of act Sept. 6, 1966, and is now covered by 5 U.S.C. §§ 502, 2105, 3551, 5534, 6323.

The second (and final) sentence of this former section, which was from act July 1, 1902, 32 Stat. 615, ch. 1352, and which provided that this former section should be construed as covering all days of service which the National Guard, or any portion thereof, might be ordered to perform by the commanding general, was repealed by act of Oct. 22, 1968. Pub. L. 90–623. The entire subject matter was reenacted by section 1(17)(B) of the same act as section 5 U.S.C. § 6323(c).

Chapter 8.—PAY AND ALLOWANCES

§ 39–805. Annual estimates.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 9.—MISCELLANEOUS PROVISIONS

§ 39–901. Duties of officers.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 39–802.

TITLE 40.—MOTOR VEHICLES

Chapter 1.—REGISTRATION OF MOTOR VEHICLES

§ 40–101. Definitions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–103, 47–1208.

§ 40–102. Registration of motor vehicles and trailers—Certificates — Tags—Duplicates—Dealers—Fees—Official and foreign vehicles and trailers—Transfers—Regulations.

* * * * *

(b) The Commissioners of the District of Columbia by regulation shall provide for the issuance by the director—

(1) annually to any dealer, upon payment of the fee prescribed in section 40–103, of a registration certificate and identification tags bearing a distinguishing dealer's mark, for interchangeable use on motor vehicles and trailers in accordance with regulations promulgated by the Commissioners;

(2) annually, without charge, of certificates of registration and identification tags for all motor vehicles and trailers owned by the United States or by the District of Columbia, or officially used by any duly accredited representative of a foreign government;

(3) of duplicate registration certificates or duplicate identification tags, upon proof satisfactory to the director of loss, mutilation, or destruction thereon, upon payment of a fee of $2 for each set of duplicate tags or $1 for each duplicate registration certificate; and

(4) to any person, upon payment of a fee of $3, of a special use certificate and special use identification tags bearing a distinguishing mark, valid for a period not exceeding twenty days, for use on a motor vehicle or trailer in accordance with regulations promulgated by the Commissioners except that in the event such certificate and tags are necessary for use in complying with vehicle inspection regulations made pursuant to the authority contained in section 40–207, prior to completion of the registration of such vehicle or trailer, the fee shall be $2: *Provided,* That if any person be convicted of a violation of such regulations, the director may refuse thereafter to issue a special use certificate and special use identification tags to such person for a period of one year: *Provided further,* That the issuance of a special use certificate and special use identification tags for a motor vehicle or trailer shall not constitute a registration of such motor vehicle or trailer for any purpose.

* * * * *

(d) Upon the sale or other transfer to another owner of any motor vehicle or trailer registered under this title, the registration thereof shall expire. The owner selling or otherwise transferring such vehicle or trailer may register another motor vehicle or trailer for the unexpired portion of the registration year upon payment of a fee of $2 and a sum equal to the difference between the registration fee originally paid and the fee computed for such other motor vehicle or trailer under section 40–103, in case the latter is the greater. If a motor vehicle or trailer be registered in the name of an individual, the name of the spouse of such individual may be added to the registration as a joint owner, subject to applicable provisions of law relating to the titling of the motor vehicle or trailer. Upon the death of a joint owner of a motor vehicle or trailer registered under this chapter the registration thereof shall be transferred to the survivor or survivors and the fee for such transfer shall be $2.

* * * * *

(As amended July 3, 1967, Pub. L. 90–43, § 1, 81 Stat. 108; Oct. 31, 1969, Pub. L. 91–106, title IV, § 401, 83 Stat. 173.)

AMENDMENTS

1969—Act Oct. 31, 1969, Pub. L. 91–106, title IV, § 401 amended subsection (b) as follows:

In par. (3) changed the fee from "$1" and "50 cents" to "$2" and "$1" respectively; In par. (4) changed the fee from "$1 to $3;" struck out "ten days" and inserted "twenty days" and also inserted the exception clause immediately after "Commissioners" relating to certificate and tags for use in complying with inspection regulations.

In subsection (d) struck out $1 and changed it to $2.

1967—Act of July 3, 1967, added the third sentence to subsection (d) as above set out relating to the addition of a spouse's name to a registered vehicle or trailer as a joint owner.

EFFECTIVE DATE OF 1969 AMENDMENTS

Section 407 of Pub. L. 91–106, title IV, provided: "The amendments made by this title [amending section 40–102, 40–103, 40–201, 40–603, 40–301, and 40–419] shall take effect on the first day of the first month which begins on or after the thirtieth day after the date of enactment of this Act. [Oct. 31, 1969.]"

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of Act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(286, 287, 288 and 289) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (b), (c), (e) and (f) in the particulars described in pars. 286 to 289, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For

provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–103, 47–1208.

§ 40–103. Fees classified and use of proceeds designated.

(a) There shall be levied, collected, and paid for each registration year for each motor vehicle or trailer required to be registered under sections 40–101 to 40–105, the registration fee provided in this section, except that in the event the Commissioners prescribe and issue as the official identification tags for the District of Columbia tags treated with special reflective materials designed to increase the visibility and legibility of such tags, the Commissioners may charge a fee not exceeding fifty cents in addition to all other fees which may be required, and in the event the markings on any such tag are specially ordered by the person to whom the tag is to be issued and such markings are other than those in a regular series, a reservation fee of $25 and an annual fee of $10, in addition to all other fees which may be required, shall be charged for such specially ordered tag.

(b) Class A: For each passenger vehicle, including passenger vehicles licensed under paragraph (d) of section 47–2331.

(1) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of which is less than three thousand four hundred pounds, $30; three thousand four hundred pounds or more, $50.

(2) When wholly or partially equipped with other than pneumatic tires, double the above fees.

Class B. For each truck, tractor, and passenger-carrying vehicle for hire having a seating capacity of eight passengers or more in addition to the driver or operator with the exception of passenger vehicles licensed under paragraph (b) of section 47–2331.

(1) When wholly equipped with pneumatic tires, the manufacturer's shipping weight of the chassis, plus the weight of the cab and body, is less than three thousand pounds, $53; three thousand pounds or more but less than four thousand pounds, $59; four thousand pounds or more but less than five thousand pounds, $69; five thousand pounds or more but less than six thousand pounds, $80; six thousand pounds or more but less than seven thousand pounds, $91; seven thousand pounds or more but less than eight thousand pounds, $99; eight thousand pounds or more but less than nine thousand pounds, $112; nine thousand pounds or more but less than ten thousand pounds, $128; ten thousand pounds or more but less than twelve thousand pounds, $163; twelve thousand pounds or more but less than fourteen thousand pounds, $191; fourteen thousand pounds or more but less than sixteen thousand pounds, $229; sixteen thousand pounds or more, $269: *Provided,* That in determining the total weight of a vehicle subject to the provisions of this clause, there shall be excluded, in computing such weight; the weight of any special equipment which is subject to taxation as tangible personal property under subsection (e) of this section.

(2) When wholly or partially equipped with other than pneumatic tires, double the above fees.

Class C. For each trailer, when the manufacturer's shipping weight of the chassis, plus the weight of the body, is less than five hundred pounds, 11; five hundred pounds or more but less than one thousand pounds, $16; one thousand pounds or more but less than one thousand five hundred pounds, $27; one thousand five hundred pounds or more but less than two thousand five hundred pounds, $43; two thousand five hundred pounds or more but less than three thousand five hundred pounds, $61; three thousand five hundred pounds or more but less than six thousand pounds, $80; six thousand pounds or more but less than eight thousand pounds, $99; eight thousand pounds or more but less than ten thousand pounds, $123; ten thousand pounds or more but less than twelve thousand pounds, $163; twelve thousand pounds or more but less than sixteen thousand pounds, $203; sixteen thousand pounds or more, $243: *Provided,* That in determining the total weight of a trailer subject to the provisions of this Class C, there shall be excluded, in computing such weight, the weight of any special equipment which is subject to taxation as tangible personal property under subsection (e) of this section.

Class D. For each motorcycle, motor bicycle, motor tricycle, and motor wheel, $12.00.

Class E. For each motor vehicle classified by the Commissioners or their designated agent as an antique motor vehicle on the basis of a finding that such vehicle was manufactured prior to January 1, 1930, and is owned solely as a collector's item, with its use limited to participation in club activities, exhibits, tours, parades, and similar uses, but in no event for general transportation, $5.

Class F. For dealers' identification tags, first set of tags, $30, and $10 for each additional set.

Class G. For each motor vehicle propelled by fuel not subject to taxation under chapter 19 of title 47, and motor vehicles propelled by any means other than motor fuels as defined in said chapter, double the fees provided in this subsection for classes A through D.

(c) When application for registration of any motor vehicle or trailer or for registration as a dealer or for issuance of dealers' identification tags is received by the director on or after October 1, the registration fee, or the fee for issuance of dealers' identification tags shall be one-half the amount otherwise provided.

(d) Proceeds from fees payable under this chapter shall be divided between the General Fund and the Highway Fund. The Commissioners are authorized and empowered to determine the percentage of all proceeds from fees payable under this chapter which shall be deposited to the credit of the General Fund of the District of Columbia: *Provided,* That the percentage of proceeds deposited to the credit of the General Fund shall be not less than forty-two per centum or more than forty-seven per centum of all proceeds from fees payable under

this chapter. The remainder of such proceeds payable under this chapter, all moneys collected from the motor-vehicle-fuel tax, and fees charged for the titling of motor vehicles and trailers, including fees charged for the issuance of permits to operate motor vehicles, shall be deposited in a special account in the Treasury of the United States entirely to the credit of the District of Columbia and shall be appropriated and used solely and exclusively for the following purposes:

(1) For construction, reconstruction, improvement, and maintenance of public highways, including the necessary administrative expenses in connection therewith;

(2) For the expenses of the office of the director of vehicles and traffic incident to the regulation and control of traffic and the administration of the same; and

(3) For the expenses necessarily involved in the police control, regulation, and administration of traffic upon the highways: *Provided, however,* That the total amount to be expended under this item shall not exceed 15 per centum of the total payment appropriated for pay and allowances of officers and members of the Metropolitan police force.

For the fiscal year 1938 all moneys appropriated for the construction, reconstruction, improvement, and maintenance of highways and administrative expenses in connection therewith, all moneys appropriated for the department of vehicles and traffic, and 15 per centum of all moneys appropriated for pay and allowances for officers and members of the Metropolitan police force shall be paid from and chargeable against the fund hereby created.

(e) Notwithstanding the provisions of this chapter, special equipment mounted on a motor vehicle or trailer and not used primarily for the transportation of persons or property shall be taxed as tangible personal property as provided by law. For the purpose of determining the fees authorized by clause 1 of class B and classes C and G of subsection (b) of this section, the weight of special equipment taxed in accordance with the provisions of this subsection (e) shall be excluded in computing the weight of the vehicle or trailer on which it is mounted. (Aug. 17, 1937, 50 Stat. 681, ch. 690, § 3, title IV; May 16, 1938, 52 Stat. 359, ch. 223, § 4; July 17, 1939, 53 Stat. 1046, ch. 313, § 2; Sept. 8, 1950, 64 Stat. 793, ch. 921, §§ 4, 5, 6; May 18, 1954, 68 Stat. 112, ch. 218, §§ 603, 604; Sept. 2, 1957, 71 Stat. 598, Pub. L. 85–273, §§ 1, 2; Sept. 6, 1960, 74 Stat. 816, Pub. L. 88–716, §§ 1–3; Oct. 31, 1969, Pub. L. 91–106, title IV, § 402, 83 Stat. 174.)

AMENDMENTS

1969—Act Oct. 31, 1969. Pub. L. 91–106, title IV, § 402, made the following amendments:

In subsection (a) inserted the matter relating to fees for tags containing markings specially ordered;

In subsection (b) relating to "Class A" struck out "three-thousand five hundred" each place it appeared and inserted in lieu "three-thousand four hundred" and struck out $22 and $32 and inserted instead $30 and $50 respectively;

In subsection (b) relating to "Class B" increased fees for trucks, tractors and certain commercial vehicles as above set out.

In subsection (b) relating to "Class C" increased the fees for trailers as above set out; and

In subsection (d) changed "sixty-four" and "seventy-four" to "forty-two" and "forty-seven" respectively.

EFFECTIVE DATE OF 1969 AMENDMENTS

See § 407 of Pub. L. 91–106, set out as a note to sec. 40–102.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this Act) may be cited as the 'District of Columbia Revenue Act of 1969'."

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(290 and 291) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (a) and (d) in the particulars described in pars. 290 and 291, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9–220, 40–102, 47–1208.

§ 40–104. Unlawful acts—Penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–103, 47–1208.

§ 40–105. Provisions not affected.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–103, 47–1208.

Chapter 2.—INSPECTION

§ 40–201. Annual inspection of motor vehicles—Inspection fee.

At the time of the registration of each motor vehicle or trailer there shall be levied and collected a fee known as the "inspection fee" of $2. The District of Columbia Council may prescribe regulations to permit a person who owns a motor vehicle or trailer not required to be registered in the District of Columbia to have such motor vehicle or trailer inspected in the District of Columbia. Such regulations shall fix the fee for such inspection in such amount as, in the Council's judgment, will be commensurate with the cost to the District of Columbia of such inspection. (Feb. 18, 1938, 52 Stat. 78, ch. 31, § 1; July 16, 1947, 61 Stat. 360, ch. 258, Art. IV, § 1; Oct. 12, 1968, Pub. L. 90–567, § 1, 82 Stat. 1002; Oct. 31, 1969, Pub. L. 91–106, title IV, § 403, 83 Stat. 174.)

AMENDMENTS

1969—Act Oct. 31, 1969, Pub. L. 91–106 title IV, § 403, amended section by changing the fee from $1 to $2.

1968—Pub. L. 90–567, amended the section by adding thereto the sentences above set out dealing with the authority of the District Council to make regulations permitting the inspection of vehicles not required to be registered and fixing the fees.

EFFECTIVE DATE OF 1969 AMENDMENTS

See § 407 of Pub. L. 91–106, set out as a note to sec. 40–102.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this Act) may be cited as the 'District of Columbia Revenue Act of 1969'."

§ 40–205. Vehicles not inspected, or unsafe.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 40–207. Regulations by Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 3.—OPERATORS' PERMITS

§ 40–301. Operators' permits—Application—Examination—Periods for which issued—Fee—Lost permits—Age requirements—Provisions affecting personnel of armed forces of United States and foreign nations—Contents of permits—Possession of operator—Operation without permit prohibited.

(a) (1) The Commissioners or their designated agent shall, upon application, the payment of a fee of $12, and compliance with such regulations as the Commissioners or their designated agent may prescribe, issue a motor vehicle operator's permit valid for a period not in excess of four years, to any individual sixteen years of age or over who, after examination, in the opinion of the Commissioners or their designated agent, is mentally, morally, and physically qualified to operate a motor vehicle in such manner as not to jeopardize the safety of individuals or property. The Commissioners or their designated agent shall cause each applicant to be examined as to his knowledge of the traffic regulations of the District and shall require the applicant to give a practical demonstration, or produce evidence acceptable to the Commissioners or their designated agent, of his ability to operate a motor vehicle within a congested portion of the District, except that upon the renewal of any such operator's permit such examination and demonstration may be waived in the discretion of the Commissioners or their designated agent. Should the Commissioners or their designated agent believe that the issuance or reissuance of a permit in accordance with the provisions of this chapter may prove a menace to public safety, they or their agent may refuse the issuance or reissuance thereof. No operator's permit issued to any individual under eighteen years of age shall authorize the operation by such individual while he is under the age of eighteen years of any motor vehicle other than a passenger vehicle or motorcycle or motor bicycle, used solely for purposes of pleasure and not for compensation.

* * * * *

(4) In the event an operator's permit or a learner's permit issued under the authority of this section is lost or destroyed, or requires replacement for any reason other than through error or other act of the Commissioner not caused by the person to whom such permit was issued, such person may obtain a duplicate or replacement permit upon payment of a fee of $2.

* * * * *

(As amended Oct. 31, 1969, Pub. L. 91–106, title IV, § 405, 83 Stat. 174.)

AMENDMENT

1969—Act Oct. 31, 1969, Pub. L. 91–106, title IV, § 405, amended subsection (a) (1) by striking out $3 and inserting $12 and changing "three years" to "four years". Also struck out par (a) (4) and changed it to read as above set out. The amendment of (a) (4) makes it applicable to cases where the permit is lost or destroyed or replacement is required for any reason, other than error, or other act of the Commissioner not caused by the holder of the permit and increases the fee from 50 cents to $2.

EFFECTIVE DATE OF 1969 AMENDMENT

See § 407 of Pub. L. 91–106, set out as a note to sec. 40–102.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this Act) may be cited as the 'District of Columbia Revenue Act of 1969'."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(292 and 293) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (a) (1), (6) and (b) in the particulars described in pars. 292 and 293. to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 25–127, 40–303, 47–2331.

NOTES TO DECISIONS

Arrest

Actions of police officers in stopping automobile driven by defendant, who had prior narcotics offender record, to check whether he had valid driver's permit was authorized as routine police traffic investigation, and did not constitute an arrest. *J. D. Williams* v. *United States* (D.C. App. 1970, 263 A. 2d 659).

"Operating" defined

A person found sitting behind the steering wheel of an automobile at the point of collision with another vehicle

is "operating" such vehicle within this section requiring every person who operates a motor vehicle to have an operator's permit in his possession. *H. I. Taylor* v. *United States* (D.C. App. 1969, 259 A. 2d 835).

Arresting officer who arrived at the scene of accident and observed defendant sitting behind steering wheel of an automobile which had collided with rear-end of a tractor-trailer, and where defendant was unable to produce an operator's permit, arrest of defendant was justified and pistol discovered on defendant's person in routine weapons check was admissible as incident to a lawful arrest. *Id.*

Restricted license

Driver whose operator's license was subject to restriction that he wear glasses and who operated automobile without glasses was guilty of operating automobile contrary to restricted license notwithstanding his own medical examination showing such glasses were no longer necessary. *B. Reis* v. *District of Columbia* (D.C., App. 1967. 230 A. 2d 487).

§ 40–302. Revocation or suspension of operators' permits—Procedure—New permit after revocation—Nonresidents—Penalty.

(a) Except where for any violation of this chapter revocation of the operator's permit is mandatory, the Commissioners or their designated agent may with or without a prior hearing revoke or suspend an operator's permit for any cause which they or their agent may deem sufficient: *Provided,* That in each case where a permit is revoked or suspended the reasons therefor shall be set out in the order of revocation or suspension: *Provided further,* That such order shall take effect five days after its issuance unless the holder of the permit shall have filed within such period, written application with the Commissioners of the District of Columbia for a review of their order or the order of their agent, and, if upon such review, the Commissioners shall sustain such order, the same shall become effective immediately: *Provided further,* That application to said Commissioners for a review shall not operate as a stay of such order of the commissioners or their agent when the order has been issued revoking or suspending a permit on account of mental or physical incapacity, for driving under the influence of liquor or narcotic drugs; for manslaughter when an automobile is involved, or for operating a motor vehicle equipped with a smoke screen.

An individual whose permit is denied, suspended, or revoked by the commissioners or their agent may, if application for a review by the commissioners of an order for revocation or suspension is not filed, or if an application for review by them is filed, after the commissioners' decision on the review, petition the District of Columbia Court of Appeals for a review of the order or decision in the manner provided by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510).

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 163(g)(1), 84 Stat. 583.)

AMENDMENT

1970—Section 163(g)(1) of Act July 29, 1970, Public Law 91–358 amended subsection (a) by striking out "sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code" and inserting in lieu thereof "the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510)".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 25–127, 40–205, 40–603, 40–612, 47–2331.

NOTES TO DECISIONS

Administrative action

Mere fact that proof tended to reveal at a suspension hearing before permit control officer of District of Columbia Department of Motor Vehicles that 17-year-old driver, whose license was suspended, was driving while under influence of alcohol did not thereby convert the proceedings, administrative in character, into a judicial proceeding of the kind Congress assigned exclusively to juvenile court. *K. P. Murphy, a minor etc.* v. *W. D. Heath, Director, etc.* (D.C. App. 1969, 256 A. 2d 421).

The court held that the exclusive jurisdiction in judicial proceedings conferred by Juvenile Court Act on the juvenile court is not a jurisdictional bar to the *Id.* administrative action of suspending motor vehicle operator's permit of 17-year-old driver.

Construction

Statute which permits the revocation or suspension of an operator's permit for any cause deemed sufficient was properly interpreted as permitting such revocation or suspension only for violations of usual and reasonable traffic regulations and, so construed, did not unconstitutionally delegate legislative authority. *W. R. Franklin* v. *District of Columbia* (D.C. App. 1968, 248 A. 2d 677).

§ 40–303. Nonresidents exempt from registration—Period of exemption.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 25–127, 40–104, 40–301, 40–302, 47–2331.

Chapter 4.—MOTOR VEHICLE SAFETY RESPONSIBILITY

Sec.

40–492. Jurisdiction of the Superior Court of the District of Columbia as to prosecutions for violations of provisions of chapter.

§ 40–417. Short title.

NOTES TO DECISIONS

Constitutionality

Congress has reposed issuance and retraction of driver's licenses within discretion of the Commissioners and it may surround this grant with reasonable requisites and contingencies. *J. F. Cheek et al.* v. *W. E. Washington et al.* (1970, 311 F. Supp. 965).

§ 40–418. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 40–419. Administration by Commissioners.

(a) The Commissioners shall administer and enforce the provisions of this chapter, and may make rules and regulations necessary for its administration, including rules and regulations assessing reasonable fees to reimburse the District of Columbia for the cost of reinstating licenses and registrations suspended under the authority of this chapter, such

fees not to exceed the amount of $10 for the reinstatement of a license or registration, or both a license and registration.

* * * * *

(As amended Oct. 31, 1969, Pub. L. 91–106, title IV, § 406, 83 Stat. 175.)

AMENDMENT

1969—Act Oct. 31, 1969, Pub. L. 91–106, § 406, amended subsection (a) by enlarging the authority of the Commissioner to make rules and regulations relating to reinstatement of a license or registration as above set out.

EFFECTIVE DATE OF 1969 AMENDMENTS

See § 407 of Pub. L. 91–106, set out as a note to sec. 40–102.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this Act) may be cited as the 'District of Columbia Revenue Act of 1969'."

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(294) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to making rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 40–420. Review by Commissioners.

Any order or act of any agent of the Commissioners under the provisions of this chapter shall be subject to review by the Commissioners. Application for review of any such order or act shall be in writing and shall set out in detail the reasons for such review. Such application shall be filed with the Commissioners within five days after the issuance of the order or occurrence of the act in question. If upon review the Commissioners shall sustain such order or act, the same shall become effective immediately.

Any person whose license or motor-vehicle registration shall be denied, suspended, or revoked by the Commissioners under the provisions of this chapter may, within thirty days after such denial, revocation, or suspension has been reviewed by the Commissioners and sustained by them, file in the District of Columbia Court of Appeals an application for the allowance of an appeal from the order or decision of the Commissioners. Appeal shall be as provided in the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510).

For the purposes of this section, the phrase "review by the Commissioners" shall mean a review by the Board of Commissioners of the District of Columbia or a review by any board of review established by the Commissioners of the District of Columbia to review the order or act of any agent of the Commissioners pursuant to the provisions of this chapter. No member of such board of review established by the Commissioners shall review any of his own orders or acts. (May 25, 1954, 68 Stat. 122, ch. 222, § 4; Aug. 28, 1958, 72 Stat. 954, Pub. L. 85–792, § 3; July 8, 1963, 77 Stat. 78, Pub. L. 88–60, § 6; July 29, 1970, Pub. L. 91–358, § 163(h), title I, 84 Stat. 583.)

AMENDMENTS

1970—Section 163(h) of Act July 29, 1970, Public Law 91–358 amended the second paragraph of section by striking out the second and succeeding sentences and inserting in lieu thereof "Appeal shall be as provided in the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510)."

For provisions of stricken matter see 1967 edition of the code.

1958—Act Aug. 28, 1958, struck the second sentence providing for filing of application of review with commissioners within five days after issuance of order or occurrence complained of, and added the new matter set out as the second and third sentences of the section.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40–417.

CHANGE OF NAME

Act July 8, 1963, § 6, substituted "District of Columbia Court of Appeals" for "Municipal Court of Appeals for the District of Columbia". Provisions identical with those of said section 6 were contained in act Oct. 23, 1962, 76 Stat. 1172, Pub. L. 88–873, § 6, which was repealed by act Dec. 23, 1963. 77 Stat. 629, Pub. L. 88–241, § 21(a). See section 11–101.

AUTHORITY OF COMMISSIONERS NOT AFFECTED—DELEGATION OF AUTHORITY

Section 16 of act Aug. 28, 1958, provides as follows: "Nothing in this Act shall be construed so as to affect the authority vested in the Board of Commissioners of the District of Columbia by Reorganization Plan Numbered 5 of 1952 (66 Stat. 824). The performance of any function vested by this Act in the Board of Commissioners or in any office or agency under the jurisdiction and control of said Board of Commissioners may be delegated by said Board of Commissioners in accordance with section 3 of such plan."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 40–421. Abstract of operating record.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 40–422. Information regarding financial responsibility to be furnished person injured.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 40–423. Service of process on nonresident.

REFERENCES IN TEXT

Section 13–108, referred to in subsection (a) of this section, was repealed by act Dec. 23, 1963, 77 Stat. 620, Pub. L. 88–241, eff. Jan. 1, 1964, and is now covered by sections 13–336 and 13–337.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40–493.

NOTES TO DECISIONS

Construction

In authorizing substituted service on nonresident motorists, in derogation of the common law, Motor Vehicle Safety Responsibility Act affects substantial rights and must therefore be strictly construed and strictly complied with. *R. J. Heinrich* v. *R. S. Huke* (D.C. App. 1968, 244 A. 2d 915).

Delay in delivery of summons and complaint to Marshal

Failure of plaintiff to deliver summonses and copies of complaint to the United States Marshal until 18 days after period of limitations had run was not excusable because of fact that two of corporate defendants were not residents of the District of Columbia and could not be sued and would not be served until plaintiff first filed traffic act bond required by D.C. Code. *Criterion Insurance Company, etc.* v. *W. L. Lyles, et al.* (D.C. App. 1968, 244 A. 2d 913).

Delay in mailing summons and complaint

Although copies of summons and complaint were served upon Director of Motor Vehicles in action arising out of motor vehicle collision in Distrct of Columbia with nonresident motorist, mailing summons and complaint to nonresident motorist seven months after statute of limitations had run constituted failure to comply with statutory requirement that notice of such service and copy of process be sent "forthwith" by registered mail. *R. J. Heinrich* v. *R. S. Huke* (D.C. App. 1968, 244 A. 2d 915).

Filing of return receipt

Filing of return receipt is not an integral part of the District of Columbia Motor Safety Responsibility Act which authorizes substituted service on nonresident motorist since jurisdiction attaches when service is made on the Director of Motor Vechicles and the nonresident receives copies of the process and notice of service. *M. L. Harper* v. *E. W. Catherton, Jr.* (D.C. App. 1969, 255 A. 2d 492).

Place of service of notice

Although defendant was a resident of Maryland at the time service was purported to have been made under the District of Columbia Motor Safety Responsibility Act that fact did not render notice to the defendant in Virginia at his place of work ineffective, as the statute requires that notice of such service be sent to defendant, not to him at his residence. *M. L. Harper* v. *E. W. Catherton, Jr.* (D.C. App. 1969, 255 A. 2d 492).

Notice is essential to the court's jurisdiction. *Id.*

Proof of service of notice

Since there was no conclusive proof one way or the other that nonresident motorist actually received notice of service, purported to have been made under the District of Columbia Motor Safety Responsibility Act, it was not error to vacate default judgement previously entered against motorist. *M. L. Harper* v. *E. W. Catherton, Jr.* (D.C. App. 1969, 255 A. 2d 492).

§ 40–424. Operator deemed to be agent of owner.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40–493.

NOTES TO DECISIONS

Action against owner of vehicle

The fact that D.C. Employees Non-Liability Act barred an action by a passenger-schoolteacher against a driver-schoolteacher did not preclude an action by passenger-schoolteacher against the owner of the vehicle. *F. P. Davis et ano.* v. *P. O. Harrod et ano.* (1969, 407 F. 2d 1280, 132 U.S. App. D.C. 345).

Common law presumption

As to an area which is not covered by District of Columbia Financial Responsibility Law, plaintiff was entitled to common-law presumption. *F. O. Gaither* v. *C. R. Myers et ano.* (1968, 404 F. 2d 216, 131 U.S. App. D.C. 216, see also 232 A. 2d 577).

Consent

The "consent" which is contemplated by a statute creating a presumption that motor vehicle was being operated with the consent of the owner is an informed consent, based on knowledge, not clouded by mistake or misrepresentation, or produced by error of fact. *J. A. McClellan* v. *Allstate Insurance Company etc., et al.* (D.C. App. 1968, 247 A. 2d 58).

A presumption that a motor vehicle involved in an accident was being operated with the consent of owner is a rebuttable one and continues only until overcome by uncontradicted proof sufficient to destroy the inference. *Id.*

Evidence overcoming presumption

Statutory presumption that proof of ownership of motor vehicle shall be prima facie evidence that motor vehicle was being operated with consent of owner may be overcome by uncontradicted denial by the owner, and in such a case a directed verdict for owner is proper. *C. R. Meyers et ano.* v. *F. O. Gaither* (D.C. App. 1967, 232 A. 2d 577; remanded 404 F. 2d 216).

Evidence that automobile of defendant was involved in accident in Maryland about 11:30 p.m., that it was not until about 3:30 a.m., after repeated telephone calls, that police succeeded in contacting owner, and testimony of owner that he had been at his home all evening made question for jury whether automobile was being operated by owner or with owner's consent. *Id.*

Extra territorial effect

The District of Columbia Financial Responsibility Law was inapplicable where at the time of injury the automobile was being operated in Maryland. *F. O. Gaither* v. *C. R. Myers et ano.* (1968, 404 F. 2d 216, 131 U.S. App. D.C. 216, see also 232 A. 2d 577).

Application of evidentiary clause of District of Columbia statute that proof of ownership of automobile shall be prima facie evidence that automobile was operated with consent of owner to trial of cause of action arising from operation of automobile in Maryland did not give statute extra-territorial effect. *C. R. Meyers et ano.* v. *F. O. Gaither* (D.C. App. 1967, 232 A. 2d 577; remanded 404 F. 2d 216).

Issue of permission to use automobile

Evidence on the issue of whether defendant automobile owner consented to use of her automobile by defendant driver, who was an employee of corporation of which owner was a major stockholder, and who had used owner's automobile on other occasions, and with whom owner left her keys and note about certain errands, was for the jury in action for damages sustained by plaintiffs in collision with that automobile. *M. Williams* v. *M. Baines and F. Baines* (D.C. App. 1969, 257 A. 2d 762).

§ 40–425. Motor Vehicle Owners' and Operators' Financial Responsibility Fund, D.C.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 40–426. Report of accident required.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–428, 40–431, 40–433, 40–487, 40–493.

§ 40–427. Form of accident report.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–426, 40–428, 40–431, 40–433, 40–493.

§ 40–428. Incapacity of person to make an accident report.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–426, 40–431, 40–433, 40–487, 40–493.

§ 40–429. Additional information concerning accident to be furnished on request.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–426, 40–428, 40–431, 40–433, 40–487, 40–493.

§ 40–430. Suspension of license and registration for failure to report.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–426, 40–428, 40–431, 40–433, 40–493.

§ 40–431. Accident reports to be confidential.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–426, 40–428, 40–433, 40–493.

§ 40–432. Application of chapter—Amount.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–434, 40–436 to 40–438, 40–440 to 40–444, 40–446, 40–448, 40–449.

§ 40–433. Determination of the amount of security.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–434, 40–436 to 40–438, 40–440 to 40–444, 40–446, 40–448, 40–449.

§ 40–434. Exceptions to requirements as to security and suspension.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–435 to 40–438, 40–440 to 40–444, 40–446, 40–448, 40–449.

§ 40–435. Automobile liability policy or bond—Requirements.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–434, 40–436 to 40–438, 40–440 to 40–444, 40–446, 40–448, 40–449.

§ 40–436. Security—Form and amount.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–434, 40–437, 40–438, 40–440, to 40–444, 40–446, 40–448, 40–449.

§ 40–437. Failure to deposit security—Suspensions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–434, 40–436, 40–438, 40–440 to 40–444, 40–446, 40–448, 40–449.

NOTES TO DECISIONS

Constitutionality

The plaintiff's claim of unconstitutionality of this section, requiring suspension of drivers' licenses and automobile registrations for persons who are involved in automobile accident causing more than $100 damages and are either uninsured, unable to post security, or unable to obtain release from other parties involved, was so insubstantial as not to require the convening of a three-judge federal court. *J. F. Cheek et al.* v. *W. E. Washington, et al.* (1970, 311 F. Supp. 965).

Congress has reposed issuance and retraction of driver's licenses within the discretion of the Commissioners and it may surround this grant with reasonable requisites and contingencies. *Id.*

§ 40–438. Release from liability.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–434, 40–436, 40–437, 40–440 to 40–444, 40–446, 40–448, 40–449.

§ 40–439. Adjudication of nonliability—Release from requirement of the deposit of security.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–434, 40–436 to 40–438, 40–440 to 40–444, 40–446, 40–448, 40–449.

§ 40–440. Agreements for payment of damages.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–434, 40–436 to 40–438, 40–441 to 40–444, 40–446, 40–448, 40–449.

§ 40–441. Payment upon judgment—Release of judgment debtor.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–434, 40–436 to 40–438, 40–440, 40–442 to 40–444, 40–446, 40–448, 40–449.

§ 40–442. Termination of security requirement.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–434, 40–436 to 40–438, 40–440, 40–441, 40–443, 40–444, 40–446, 40–448, 40–449.

§ 40–443. Duration of suspension.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–434, 40–436 to 40–438, 40–440 to 40–442, 40–444, 40–446, 40–448, 40–449.

§ 40–444. Nonresidents—Unlicensed drivers—Unregistered vehicles—Accidents in other States.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–434, 40–436 to 40–438, 40–440 to 40–443, 40–446, 40–448, 40–449.

§ 40–445. Commissioners authorized to decrease amount of security.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–434, 40–436 to 40–438, 40–440 to 40–444, 40–446, 40–448, 40–449.

§ 40–446. Correction of Commissioners' action within one year.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–434, 40–436 to 40–438, 40–440 to 40–444, 40–448, 40–449.

§ 40–447. Disposition of security.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–434, 40–436 to 40–438, 40–440 to 40–444, 40–446, 40–448, 40–449.

§ 40–448. Return of deposit.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–434, 40–436 to 40–438, 40–440 to 40–444, 40–446, 40–449.

§ 40–449. Matters not to be evidence in civil suits.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–434, 40–436 to 40–438, 40–440 to 40–444, 40–446, 40–448.

§ 40–450. Persons required to deposit proof of future responsibility.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–474.

§ 40–451. Proof of financial responsibility for the future.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–474, 40–476.

§ 40–452. "Judgment" and "State" defined.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–453, 40–462, 40–474.

§ 40–453. Suspension of license and registration for certain convictions—Effect of proof of financial responsibility—Vehicles owned or leased by the United States, a State, or a political subdivision thereof—Suspension for out of District convictions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–462, 40–474.

§ 40–454. Duration of suspension—Giving and maintenance of proof of financial responsibility.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–474.

§ 40–455. Suspension of unlicensed or licensed person after certain convictions—Proof of financial responsibility required—Certificate of conviction to be forwarded to Commissioners.

(a) If a person by final order or judgment is convicted of or forfeits any bail or collateral deposited to secure an appearance for trial for driving a motor vehicle within the District of Columbia at a time when his license is suspended or revoked, the operating privilege of such person shall be suspended and no license shall thereafter be issued to such person, but if such person has obtained a license prior to the time the Commissioners have issued an order precluding the issuance of such license, then such license shall be suspended; and no vehicle shall continue to be registered or thereafter be registered in the name of such person as owner, unless such person shall give and thereafter maintain proof of financial responsibility.

(b) It shall be the duty of the clerk of the court in which any such conviction or forfeiture is ordered to forward immediately to the Commissioners a certified copy of said order, which certified copy shall be prima facie evidence of the facts stated therein. (May 25, 1954, 68 Stat. 131, ch. 222, § 39; Aug. 28, 1958, 72 Stat. 956, Pub. L. 85–792, § 10; Oct. 17, 1968, Pub. L. 90–589, § 1, 82 Stat. 1152.)

AMENDMENTS

1968—Act, Oct. 17, 1968, Pub. L. 90–589, amended subsection (a) by striking out the following language: "trial for:

"(1) Driving a motor vehicle upon the highways without being licensed to do so under the laws of the District of Columbia when so required; or

"(2) Driving a vehicle not registered under the laws of the District of Columbia when so required; the operating privilege" and inserting in lieu thereof the following: "trial for driving a motor vehicle within the District of Columbia at a time when his license is suspended or revoked, the operating privilege".

1958—Aug. 28, 1958, amended section generally, and among other changes, added provision for suspension of license obtained prior to issuance of order precluding issuance of such license, and also added paragraph (b) respecting duty of clerk of court in which conviction or forfeiture is ordered to forward copy of such order to Commissioners.

EFFECTIVE DATE

Section effective one year after May 25, 1954, see section 87 of act May 25, 1954, set out as a note under § 40–417.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–474.

§ 40–456. Suspension of nonresidents' operating privilege—Duration.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–474.

§ 40–457. Report by courts of nonpayment of judgments.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–474.

§ 40–458. Judgment against a nonresident—Transmittal of copy to license and registration official of defendant's State.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–474.

§ 40–459. Suspension for nonpayment of judgment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–460, 40–462, 40–474.

§ 40–460. Government vehicles—Exception as to nonpayment of judgment provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–463, 40–474.

§ 40–461. Consent by judgment creditor to allowance of license, registration, or operating privileges to judgment debtor.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–463, 40–474.

§ 40–462. Commissioners finding that an insurer is obligated to pay judgment—Effect of finding—License, registration and operating privileges in the event of a finding.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–474.

§§ 40–463 to 40–465.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 40–452, 40–453, 40–462, 40–474.

§ 40–466. Installment payment of judgments—Default.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–461 to 40–463, 40–474.

§ 40–467. Breach of agreement to pay in installments.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–474.

§§ 40–468, 40–469.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 40–452, 40–453, 40–462, 40–474.

§ 40–470. Certificate of insurance as proof.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–469, 40–473, 40–474.

§ 40–471. Certificate filed by nonresident as proof of financial responsibility.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–469, 40–473, 40–474.

§ 40–472. Default by nonresident insurance carrier.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–474.

§ 40–473. "Motor-vehicle liability policy" defined.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–474.

§ 40–474. Notice of cancellation or termination of certified policy.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462.

§ 40–475. Provisions of chapter not to affect other policies.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–474.

§ 40–476. Surety bond as proof of financial responsibility.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–469, 40–474.

§ 40–477. Bond a lien against scheduled real estate—Recording—Notice.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–469, 40–474.

§ 40–478. Action on bond.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–474.

§ 40–479. Deposit of money with Commissioners—Certificate—Evidence of no unsatisfied judgments.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–469, 40–474.

§ 40–480. Application of money deposit—Limits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–474.

§ 40–481. Owner of a motor vehicle may give proof for others.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–474.

§ 40–482. Substitution of proof.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–474.

§ 40–483. Requirement of other proof of financial responsibility—Prior proof—Suspension.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–474.

§ 40–484. Duration of proof—Cancellation or return of proof.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–452, 40–453, 40–462, 40–474, 40–498c.

§ 40–485. Transfer of registration to defeat purpose of chapter.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 40–486. Surrender of license and registration.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40–490.

§ 40–489. Operating motor vehicle when license suspended or revoked.

NOTES TO DECISIONS

Collateral estoppel

Since the defendant who had been acquitted on charges of reckless driving, speeding, and driving motor vehicle after his permit had been suspended failed to present defense of collateral estoppel to the trial court hearing prosecution for unauthorized use of motor vehicle, the reviewing court would not consider claim. *R. Mahoney* v. *United States* (1969, 420 F. 2d 253, 137 U.S. App. D.C. 3).

§ 40–492. Jurisdiction of the Superior Court of the District of Columbia as to prosecutions for violations of provisions of chapter.

All prosecutions for violations of this chapter shall be in the Superior Court of the District of Columbia, in the name of the District of Columbia, by the corporation counsel or any of his assistants. (May 25, 1954, 68 Stat. 139, ch. 222, § 76; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Pub. L. 91–358, struck out "District of Columbia Court of General Sessions" and inserted in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding § 11–101.

§ 40–494. Self-insurers.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40–469.

Chapter 5.—PUBLIC-OWNED VEHICLES

§ 40–501. Motor vehicles to be marked.

USE OF PUBLICLY-OWNED VEHICLES

Provisions similar to those set out under the above heading as a note to this section in the main volume are repeated in section 10 of the District of Columbia Appropriations Act of Nov. 13, 1967, Pub. L. 90–134, 81 Stat. 440, as follows:

"All motor-propelled passenger-carrying vehicles (including watercraft) owned by the District of Columbia

shall be operated and utilized in conformity with section 16 of the Act of August 2, 1946 (60 Stat. 810), and shall be under the direction and control of the Commissioners, who may from time to time alter or change the assignment for use thereof, or direct the alteration of interchangeable use of any of the same by officers and employees of the District, except as otherwise provided in this Act. 'Official purposes' shall not apply to the Commissioners of the District of Columbia or in cases of officers and employees the character of whose duties makes such transportation necessary, but only as to such latter cases when the same is approved by the Commissioners."

Similar provisions are contained in the following appropriation Acts:

1971—July 16, 1970, Pub. L. 91–337, § 9, 84 Stat. 436.
1970—Dec. 24, 1969, Pub. L. 91–155, § 10, 83 Stat. 432.
1969—Aug. 10, 1968, Pub. L. 90–473, § 10, 82 Stat. 699.

Chapter 6.—REGULATION OF TRAFFIC

§ 40–601. Short title.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 9–131, 47–2331.

§ 40–602. Definitions.

When used in this chapter—

* * * * *

(b) The term "court" means the Superior Court of the District of Columbia;

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended par. (b) by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2331.

§ 40–603. Commissioners authorized to make regulations—Department of Vehicles and Traffic—Director—Congressional tags—Titling—Joint board—Arterial and boulevard highways—Commissioners may prescribe penalties—Publication of regulations—Signs on highways—Prosecutions—Excise tax imposed for issuance of motor vehicle title certificates.

(a) The Commissioners of the District of Columbia are authorized and empowered to make, modify, repeal, and enforce usual and reasonable traffic rules and regulations relating to vehicles, and rules and regulations concerning the control of traffic, the registration of motor vehicles, and the issuance, suspension, and revocation of operators' permits and the suspension and revocation of operating privileges, including rules and regulations assessing reasonable fees to reimburse the District for the cost of restoring suspended or revoked operators' permits and privileges, such fees not to exceed the amount of $10 per restoration and to exercise any power or perform any duty imposed on the director of traffic, which office is hereby abolished; and in the administration of the above powers and authority the commissioners may exercise the same through such officers or agents of the District as the commissioners may designate: *Provided,* That no member of the Metropolitan Police Department may be empowered to perform any function under this chapter other than in the enforcement thereof.

* * * * *

(c) The Commissioners of the District of Columbia are authorized and empowered to make, modify, and enforce reasonable regulations in respect to brakes, horns, lights, mufflers, and other equipment, the inspection of the same; the registering, reregistering, titling, retitling, transferring of titles, and revocation of the certificate of title to motor vehicles and trailers: *Provided,* That congressional tags shall be issued by the commissioners under consecutive numbers, one to each Senator and Representative in Congress, to the elective officers and disbursing clerks of the Senate and the House of Representatives, Comptroller of the Senate, the chief clerk of the Senate, the Parlimentarian of the Senate, the Parliamentarian of the House of Representatives, the attending physician of the Capitol, and the assistant secretaries (one for the majority and one for the minority of the Senate), for their official use, which, when used by them individually while on official business, shall authorize them to park their automobiles in any available curb space in the District of Columbia, except within fire plug, fire house, loading station, and loading platform limitations, and such congressional tags shall not be assigned to or used by others: *Provided further,* That such congressional tags shall be valid only for the Congress in which such tags are so issued, and it shall be unlawful to display such congressional tags for a period longer than thirty days after the opening of the next Congress.

Any person violating this section shall be fined not more than $300 or imprisoned not more than ninety days, or both.

(d) The commissioners shall cause to be levied, collected, and paid such fees for titling and retitling as they deem necessary, not to exceed the sum of $5 for each such titling or retitling, and they shall not, after the 1st day of January, 1932, register or renew the registration of any motor vehicle or trailer unless and until the owner thereof shall make application in the form prescribed by the commissioners and be granted an official certificate of title for such vehicle. No registration or other fee shall be charged to vehicles owned by the federal or District government or any duly accredited representative of a foreign government. The owner of a motor vehicle or trailer registered in the District of Columbia shall not, after the 1st day of January, 1932, operate or permit or cause to be operated any such vehicle upon any public highway in the District without first obtaining a certificate of title therefor, nor shall any individual knowingly permit any certificate of title to be obtained in his name for any vehicle not in fact owned by him, and any individual violating any provision of this subsection or any regulations promulgated thereunder shall be fined not more than $1,000 or imprisoned not more than one year, or both. If the properly designated agent of the commissioners shall determine that an applicant for a certificate

of title is not entitled thereto, such certificate of title may be refused, and in that event unless such determination is reversed upon written application to the commissioners by the individual affected, such individual shall be entitled to proceed further as provided under section 40–302(a): *Provided,* That reasonable time for hearing be given the applicant in the first instance.

* * * * *

(i) All prosecutions for violations of this chapter, excepting section 40–610, and this act or regulations made and promulgated under authority of this chapter shall be in the Superior Court of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants.

(j) In addition to the fees and charges levied under other provisions of this chapter, there is hereby levied and imposed an excise tax for the issuance of every original certificate of title for a motor vehicle or trailer in the District, and for the issuance of every subsequent certificate of title for a motor vehicle or trailer in the District in the case of sale or resale thereof, at the rate of 4 per centum of the fair market value of such motor vehicle or trailer at the time such certificate is issued, as determined by the Assessor of the District of Columbia or his duly authorized representatives. As used in this section, the term "original certificate of title" shall mean the first certificate of title issued by the District of Columbia for any particular motor vehicle or trailer. No certificate of title so issued shall be delivered or furnished to the person entitled thereto until the tax has been paid in full. The Assessor of the District of Columbia may require every applicant for a certificate of title to supply such information as he deems necessary as to the time of purchase, the purchase price, and other information relative to the determination of the fair market value of any motor vehicle or trailer for which a certificate of title is required and issued. The issuance of certificates of title for the following motor vehicles and trailers shall be exempt from the tax imposed by this subsection:

(1) Motor vehicles and trailers owned by the United States or the District of Columbia.

(2) Motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District of Columbia and establishing or maintaining residences in the District.

(3) Motor vehicles and trailers purchased or acquired by nonresidents prior to coming into the District of Columbia and establishing or maintaining a business or businesses in the District. Except as hereinafter provided, it is not intended to exempt from the tax the issuance of certificates of title for motor vehicles and trailers owned by nonresidents who are engaged in business in the District at the time of their purchase or acquisition of such vehicles and trailers and who use such vehicles and trailers in the conduct of their District business or businesses.

(4) Motor vehicles and trailers owned by a utility or public service company for use in furnishing a commodity or service: *Provided,* That the receipts from furnishing such commodity or service are subject to a gross-receipts or mileage tax in force in the District of Columbia at the time of a certificate of title for any such vehicle or trailer is issued.

(5) New motor vehicles acquired from dealers as replacements for defective vehicles purchased new not more than sixty days prior to the date of such replacement, except that if the fair market value of any replacement vehicle is greater than that of the vehicle which it replaces, than the tax imposed by this section shall be paid on such difference in value. If the fair market value of any replacement vehicle is less than that of the vehicle which it replaces, then the Commissioners or their designated agent are authorized to refund to the owner of the replacement vehicle an amount equal to the difference between the excise tax paid on the defective vehicle and the excise tax paid on the replacement vehicle. (As amended Dec. 4, 1967, Pub. L. 90–172, § 1, 81 Stat. 532; Oct. 31, 1969, Pub. L. 91–106, titles II, IV, §§ 201, 404, 83 Stat. 172, 174; Dec. 12, 1969, Pub. L. 91–145, § 101, 83 Stat. 343; July 29, 1970, Pub. L. 91–358, §§ 155(a), 163(g)(2), title I, 84 Stat. 570, 583.)

AMENDMENTS

1970—Section 163(g)(2) of Act July 29, 1970, Public Law 91–358 amended subsection (d) by striking out "and jurisdiction is hereby conferred upon the Court of Appeals of the district for this purpose".

Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (i) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia."

1969—Section 101, Act Dec. 12, 1969, Pub. L. 91–145, 83 Stat. 343, Amended subsec. (c) by inserting after "Senate and House of Representatives," the "Comptroller of the Senate."

Act Oct. 31, 1969, Pub. L. 91–106, §§ 201 and 404 amended section as follows: Subsection (a) struck out $5 fee of restoration of permits and changed it to $10; subsection (d) changed the fee from $1 to $5; and in subsection (j) changed the rate from 3 to 4 per centum.

1967—Sec. 1, Act Dec. 4, 1967, Pub. L. 90–172 amended the first sentence of subsection (d) by striking out ", under oath,".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

EFFECTIVE DATE OF 1969 AMENDMENT

Sections 202 and 407, Pub. L. 91–106, titles II, and IV provided: "The amendment made by this title (amending sec. 40–603(a)(d) and (j)) shall take effect on the first day of the first month which begins on or after the thirtieth day after the date of enactment of this Act. (Nov. 1969.)"

ABOLISHMENT OF JOINT BOARD CREATED UNDER SUBSECTION (e)

Section 503(c) of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"The joint board authorized and created by section 6(e) of the Act of March 3, 1925, 43 Stat. 1121, as amended (D.C. Code, sec. 40–603(e)), together with its functions, is hereby abolished."

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this Act) may be cited as the 'District of Columbia Revenue Act of 1969'."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(295 to 299) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (a), (c), (e), (f) and (g) in the particulars described in pars. 295 to 299, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 25–127, 40–102, 40–603–1, 40–603b, 40–612, 43–907, 47–2331, 47–2333.

NOTE TO DECISIONS

Excessive penalties in indigent cases

Where maximum penalty for jaywalking was fine of $300 or imprisonment of 10 days or both and indigent defendant received a sentence of a fine of $150 or 60 days' imprisonment, imprisonment was 50 days in excess of maximum which could have been imposed. *C. F. Sawyer* v. *District of Columbia* (D.C. App. 1968, 238 A. 2d 314).

Where defendant is indigent, sentence of imprisonment in default of payment of fine which exceeds maximum term of imprisonment which could be imposed under substantive statute as original sentence is an invalid exercise of court's discretion. *Id.*

§ 40–603–1. Appeal from assessment of excise tax for issuance of motor vehicle title certificates—Election of remedies.

Any person aggrieved by the assessment of any tax imposed by subsection 40–603(j) may, within six months from the date the person entitled to a certificate of title was notified of the amount of such tax, appeal to the Superior Court of the District of Columbia in the same manner and to the same extent as set forth in sections 47–2403, 47–2404, 47–2407, 47–2408, 47–2409, 47–2410 and 47–2411, and as the same may hereafter be amended. (May 27, 1949, 63 Stat. 129, ch. 146, title III, § 303; July 29, 1970, Pub. L. 91–358, §§ 156(a), 161(d)(2), title I, 84 Stat. 573, 581.)

AMENDMENTS

1970—Section 156(a) of Act July 29, 1970, Public Law 91–358, amended section by striking out "Board of Tax Appeals for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

Section 161(d)(2) of Act July 29, 1970, Public Law 91–358 further amended section—

(A) By striking out the second sentence thereof, and

(B) By striking out "ninety days" and inserting in lieu thereof "six months".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

§ 40–604. Parking space for Members of Congress.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(300) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2331.

§ 40–604a. Parking of automobiles in Municipal Center—Regulations—Violations and penalties.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(301, 302, and 303) of Reorg. Plan. No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners. under this section in the particulars described in pars. 301, 302 and 303, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40–808.

§ 40–605. Speeding and reckless driving.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 25–127, 40–612, 47–2331.

NOTES TO DECISIONS

Collateral estoppel

Since the defendant who had been acquitted on charges of reckless driving, speeding, and driving motor vehicle after his permit had been suspended failed to present defense of collateral estoppel to trial court hearing prosecution for unauthorized use of motor vehicle, the reviewing court would not consider claim. *R. Mahoney* v. *United States* (1969, 420 F. 2d 253, 137 U.S. App. D.C. 3).

§ 40–606. Negligent homicide.

Any person who, by the operation of any vehicle at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not wilfully or wantonly, shall cause the death of another, shall be guilty of a misdeameanor, and shall be punished by imprisonment for not more than one year or by a fine of not more than $1,000 or both. (Mar. 3, 1901, ch. 854, § 802(a), as added June 17, 1935, 49 Stat. 385, ch. 266, and amended June 25, 1936, 49 Stat. 1921, ch. 804; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 160(a)(3), 84 Stat. 578.)

AMENDMENT

1970—Section 160(a)(3) of Act July 29, 1970, Public Law 91–358 amended section by striking out the second paragraph.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–608, 40–609a.

NOTES TO DECISIONS

Causal connection

In a prosecution for negligent homicide, causal connection between injuries received in an automobile accident by decedent and his death must be proven beyond a reasonable doubt. *S. J. Stevens* v. *United States* (D.C. App. 1969, 249 A. 2d 514).

Evidence that decedent who died of a coronary occlusion five weeks after the automobile accident and was debilitated by the injuries sustained in the accident and that it was possible that state of debility precipitated the heart attack was insufficient to establish causal connection between injuries sustained in the accident and death and did not support a conviction for negligent homicide. *Id.*

Criticism of defense counsel

Unjustified criticizing of defense counsel for being unfair to government witness, taking over examination

of four defense witnesses, consuming with two of them considerable time on extraneous matters placing them in bad light, and rebuking defense counsel for unfair questions or tactics and stopping him in course of examination and making belittling or sardonic remarks required new trial on charge of negligent homicide. *A. C. Williams* v. *United States* (D.C. App. 1967, 228 A. 2d 846).

Dismissal with prejudice

Absent any notation on record or oral statement by judge in prior prosecution for negligent homicide that he was dismissing case with prejudice, trial court's conclusion in dismissing second case against defendant for negligent homicide that the prior dismissal has been on speedy trial grounds and was intended to be dismissed with prejudice was not warranted. *United States* v. *W. J. Young* (D.C. App. 1968, 237 A. 2d 542).

Elements of proof required by government

In a prosecution for negligent homicide, government must prove three elements: (1) death of human being, (2) by instrumentality of motor vehicle, (3) operated at an immoderate rate of speed or in a careless, reckless, or negligent manner, but not wilfully or wantonly. *S. J. Stevens* v. *United States* (D.C. App. 1969, 249 A. 2d 514).

Speedy trial

Where government took approximately two months to reinstate charge against defendant for negligent homicide after first charge had been dismissed and case did not come for trial, due to delays wholly attributable to government, for seven and one-half months after date of accident and defendant, a taxicab driver, has his license revoked until disposition of charge against him, defendant has been prejudiced by the delay and had been denied speedy trial. *United States* v. *W. J. Young* (D.C. App. 1968, 237 A. 2d 542).

§ 40–607. Negligent homicide included in manslaughter where death due to operation of vehicle.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40–608.

§ 40–609. Fleeing from scene of accident—Driving under the influence of liquor or drugs.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 25–127, 40–609a, 40–612, 47–2331.

NOTES TO DECISIONS

Evidence—sufficiency

Evidence was ample to support the jury's finding that defendant was operating a motor vehicle while under the influence of intoxicating liquor. *R. B. Kelly* v. *District of Columbia* (D.C. App. 1967, 233 A. 2d 503).

Urine specimen—Admissibility as evidence

Questioning by an officer of a defendant, who was charged with driving while under influence of intoxicating liquor and who was upset and sobbing and who was told that he did not have to take urine test but that if he did not it would be his word against the policeman's, but who was not physically abused, was not conduct which was so outrageous as to require exclusion of results of urine test. *J. E. Davis* v. *District of Columbia* (D.C. App. 1968, 247 A. 2d 417).

Urine specimen is admissible at the trial for driving while under the influence of intoxicating liquor despite absence of medical supervision at time of taking of test. *Id.*

Evidence was sufficient to support trial court's finding that defendant charged with driving while under the influence of intoxicating liquor voluntarily gave urine specimen admitted at trial though officer had used considerable powers of persuasion to obtain the specimen. *Id.*

§ 40–609a. Operating of vehicles while under the influence of intoxicating liquor and in violation of other laws—Prima facie evidence of intoxication—Relevant evidence of use of intoxicating liquor—Results of tests available to tested person—Blood test—Only physician at request of police may withdraw blood—Tested person may have private physician make added test—Test not compulsory.

NOTES TO DECISIONS

Urine specimen—Admissibility as evidence

Questioning by an officer of a defendant, who was charged with driving while under influence of intoxicating liquor and who was upset and sobbing and who was told that he did not have to take urine test but that if he did not it would be his word against the policeman's, but who was not physically abused, was not conduct which was so outrageous as to require exclusion of results of urine test. *J. E. Davis* v. *District of Columbia* (D.C. App. 1968, 247 A. 2d 417).

Urine specimen is admissible at the trial for driving while under the influence of intoxicating liquor despite absence of medical supervision at time of taking of test. *Id.*

§ 40–610. Smoke screens.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–603, 47–2331.

§ 40–611. Reporting by garage keeper of cars damaged in accidents.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2331.

§ 40–612. Convictions to be reported.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 25–127.

§ 40–613. Control over park system not affected by this chapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2331.

NOTES TO DECISIONS

Bus tours on Capitol Mall

A certificate of convenience and necessity is not required of a concessionaire under contract with Secretary of Interior to conduct bus tours of Capitol Mall from Washington Metropolitan Area Transit Commission. *Universal Interpretive Shuttle Corporation* v. *Washington Metropolitan Area Transit Commission et al.* (1968, 89 S. Ct. 354, 393 U.S. 186; rev'g 390 F. 2d 474).

Transit system's franchise did not give it absolute monopoly of sightseeing service on Capitol Mall and it was not protect system against competition from concessionaire acting under contract with Secretary of Interior. *Id.*

§§ 40–614, 40–615.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 47–2331.

§ 40–616. Parking meters.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(304) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to making rules and regulations for the control of parking and prescribing fees, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For pro-

visions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–804, 40–808.

§ 40–617. Loitering by public cabs.

The loitering of public cabs and hacks or vehicles of all descriptions around or in front of the hotels, theaters, or public buildings in the District of Columbia, either by stopping, except to take on or discharge a passenger, or unnecessarily slow driving, is hereby prohibited, and any driver of any such cab or hack who willfully causes the same to loiter either by stopping or slow driving as aforesaid shall be deemed guilty of a misdeameanor and punished in the Superior Court of the District of Columbia by a fine of not less than $10 nor more than $40 for such offense. The Commissioners of the District of Columbia are hereby authorized and empowered to make any regulations that may be necessary in furtherance of the purpose of this section, and are hereby given authority to revoke the license of the driver of any public hack or cab who is convicted of a violation of this section. (July 11, 1919, 41 Stat. 104, ch. 7, § 12; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(305) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to making regulations under the last sentence of the sections, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9–131.

Chapter 7.—LIENS ON MOTOR VEHICLES OR TRAILERS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 28:9–203, 28:9–302.

§ 40–701. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 42–104, 45–701.

§ 40–702. Lien to appear on certificate of title—Effect of other liens.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 42–104, 45–701.

§ 40–703. Entry of lien—Priority.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–709, 42–104, 45–701.

§ 40–704. Entry of lien—Form and requirements of instrument creating lien—When lien not entered.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 42–104, 45–701.

§ 40–705. Liens to be kept by recorder in director's office.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 42–104, 45–701.

§ 40–706. Liens shown by application for certificate—Entry of lien—Collection of fees—Absence of liens to be shown—Certificate to holder of first lien.

Applications for certificates, in addition to all other matters which may be required by law, shall show whether or not there are any liens against the motor vehicle or trailer or any equipment or accessories affixed thereto and if so, the lien information in the order of its priority, and shall be accompanied by instruments or any other papers necessary to entitle liens to be entered on the certificate.

* * * * *

(As amended Dec. 4, 1967, Pub. L. 90–172, § 2, 81 Stat. 532.)

AMENDMENT

1967—Sec. 2, Act Dec. 4, 1967, Pub. L. 90–172, amended the first sentence by striking out "under oath".

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–707, 40–711, 42–104, 45–701.

§§ 40–707 to 40–711.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 42–104, 45–701.

§ 40–712. Fees.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–712a, 42–104, 45–701, 45–714.

§ 40–712a. Fee for releasing liens.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–714.

§§ 40–713 to 40–715.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 42–104, 45–701.

Chapter 8.—REGULATION OF PARKING

§ 40–803. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 40–804. Commissioners' Powers — Acquisition of property—Construction and maintenance—Leasing to private interests—Disposal of property—Establishment of rates—Miscellaneous rules and regulations—Parking meters.

The Commissioners, within the limits of appropriations by Congress therefor, are authorized to exercise all powers necessary and convenient to carry out the purposes of this chapter, the said purposes being hereby declared to be the acquisition, creation, and operation, in any manner hereinafter provided, under public regulation, of public off-street parking facilities in the District as a necessary incident to insuring in the public interest the free circulation of traffic in and through said District. Such powers shall include, but shall not be limited to, the powers hereinafter enumerated:

(a) The power to acquire any property, real or personal, or any interest therein, by purchase, lease, gift, bequest, devise, or grant, or by condemnation under the provisions of chapter 13 of title 16 in any area of the District as to which the agency shall have made a determination that public parking facilities are necessary or expedient. Before acquiring any area for parking facilities the Commissioners shall request the National Capital Park and Planning Commission for its recommendations and it shall be the duty of said Commission to report thereon within thirty days of such request.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, § 166(g), title I, 84 Stat. 587.)

AMENDMENT

1970—Section 166(g) of Act July 29, 1970, Public Law 91–358 amended subsection (a) by striking out "sections 483 to 491, inclusive, of chapter XV, as amended, of the Code of Law for the District of Columbia, approved March 3, 1901 (31 Stat. 1265–1266)" and inserting in lieu thereof "chapter 13 of title 16 of the District of Columbia Code".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(306 and 307) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (d) and (e) in the particulars described in pars. 306 and 307, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40–805.

§ 40–805. Motor-Vehicle Parking Agency—Creation and composition—Term—Powers.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40–803.

§ 40–807. Records and data available—Additional surveys.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 40–808. Disposition of fees and moneys collected.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40–804.

§ 40–809. Appropriations—Employment of director—Salaries of employees—Salaries of members of agency.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 40–809a. Acquisition of new parking facilities prohibited—Operation and expansion of existing facilities—Exempt facilities.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40–808.

§ 40–810. Parking restrictions—Vehicles impounded—Penalties.

It shall be unlawful to park, store, or leave any vehicle of any kind, whether attended or not, or for the owner of any vehicle of any kind to allow, permit, or suffer the same to be parked, stored, or left, whether attended or not, upon any public or private property in the District of Columbia, other than public highways, without the consent of the owner of such public or private property and the Commissioners of the District of Columbia, and their designated agent or agents, are authorized to remove and impound any vehicle parked, stored, or left in violation of this section and section 40–811 and to keep the same impounded until the owner thereof, or other duly authorized person, shall deposit collateral for his appearance in court to answer for such violation, the amount of such collateral to be fixed by the Commissioners in an amount not to exceed $25. Whoever violates the provisions of this section and section 40–811 shall be punished by a fine of not more than $25. Prosecutions for violations of the provisions of this section shall be in the Superior Court of the District of Columbia upon information filed by the corporation counsel of the District of Columbia or any of his assistants. In any prosecution under this section, proof that a vehicle was parked, stored, or left on public or private property shall be prima facie evidence that the vehicle was so parked, stored, or left without the consent of the owner of such public or private property. (Jan. 15, 1942, 56 Stat. 5, ch. 4, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(308) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to fixing the amount of collateral, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40–811.

§ 40–811. Same—United States public buildings and property—Regulations—Penalties.

Nothing contained in this section and section 40–810 shall be construed to interfere with the charge and control committed to the Federal Works Administrator, acting through the Commissioner of Public Buildings, over the public buildings and property of the United States in the District of Columbia or any other officer charged with the custody and control of property of the United States in the District of Columbia and such officers with respect to such property, under their respective jurisdiction and control, are hereby authorized and empowered to make and enforce all regulations for the parking of vehicles upon the property of the United States in the District of Columbia (other than public highways), to remove and impound any vehicle, parked, stored, or left in violation of this section and section 40–810 and to keep the same impounded until the owner thereof, or other duly authorized person, shall deposit collateral for his appearance in court to answer for such violation, the amount of collateral to be fixed by the officer charged with the custody and control of property of the United States in the District of Columbia in an amount not to exceed $25. Violations of regulations for the parking of cars upon the property of the United States in the District of Columbia shall be subject to the penalties prescribed in section 40–810 and all prosecutions for the violations thereof shall be upon information filed by the United States attorney in the Superior Court of the District of Columbia. (Jan. 15, 1942, 56 Stat. 6, ch. 4, § 2; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS

All functions of the Federal Parks Administrator and the Commissioner of Public Buildings were transferred to the Administrator of General Services by section 103(a) of act June 30, 1949, 63 Stat. 380.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40–810.

Chapter 9.—INSTALLMENT SALES OF MOTOR VEHICLES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 28:9–203.

§ 40–901. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(309) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (4) with respect to including fees within the definition of the term "Governmental charges", to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1361.

§ 40–902. Maximum finance charges—Computation—Proportionate adjustments—Investigation of economic conditions to determine finance charges—Regulations—Classification of parties—Waiver.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402 (310 to 314) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (d), (e) (1), (2), (3) and (f) in the particulars described in pars. 310 to 314, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1361.

§ 40–903. Bonding of automobile dealers and applicants—Liability Insurance—Designation of Commissioners as agents for service of process—Limitation on bonds—Action on bonds.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(315) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) in the particulars described in par. 315, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1361.

§ 40–904. Delegation of functions—Exception.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1361.

§ 40–905. Promulgation of regulations—Public hearings.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(316) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the

right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1361.

§§ 40–906, 40–907.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 35–1361.

§ 40–908. Corporation counsel to conduct prosecutions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1361.

§ 40–909. Additional authority granted to Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1361.

§ 40–910. Separability of provisions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 35–1361.

TITLE 41.—PARTNERSHIPS

Chapter 1.—LIMITED PARTNERSHIPS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 41–429.

§§ 41–101 to 41–109, 41–111, 41–113 to 41–131.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 41–429.

Chapter 2.—DISSOLUTION AND PAYMENT OF DEBTS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 16–2106.

Chapter 3.—UNIFORM PARTNERSHIPS

PART III

RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

§ 41–308. Partner agent of partnership as to partnership business.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 41–309.

§§ 41–312, 41–313.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 41–314.

§ 41–315. Partner by estoppel.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 41–334.

§ 41–316. Liability of incoming partner.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 41–306.

PART IV

RELATIONS OF PARTNERS TO ONE ANOTHER

§ 41–317. Rules determining rights and duties of partners.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 41–339.

§ 41–320. Partner accountable as a fiduciary.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 41–321.

PART V

PROPERTY RIGHTS OF A PARTNER

§§ 41–326, 41–327.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 41–331.

PART VI

DISSOLUTION AND WINDING UP

§ 41–331. Dissolution by decree of court.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 41–330.

§§ 41–333, 41–334.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 41–332.

§ 41–335. Effect of dissolution on partner's existing liability.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 41–337.

§ 41–337. Rights of partners to application of partnership property.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 41–340, 41–341.

§ 41–340. Liability of persons continuing the business in certain cases.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 41–341.

Chapter 4.—UNIFORM LIMITED PARTNERSHIPS

§ 41–402. Formation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 41–401, 41–425, 41–429.

§ 41–406. Liability for false statements in certificate.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 41–418.

§§ 41–415, 41–416.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 41–410.

§ 41–417. Liability of limited partner to partnership.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 41–418.

§ 41–425. Requirements for amendment and for cancellation of certificate.

* * * * *

(3) A person desiring the cancellation or amendment of a certificate, if any person designated in paragraphs (1) and (2) as a person who must execute the writing refuses to do so, may petition the court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000 to direct a cancellation or amendment thereof. (As amended July 29, 1970, Pub. L. 91–358, § 168(h), title I, 84 Stat. 589.)

* * * * *

AMENDMENT

1970—Section 168(h) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having jurisdiction of civil actions wherein the amount in controversy exceeds $50,000".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 41–406, 41–407, 41–418.

TITLE 42.—PERSONAL PROPERTY

Chapter 1.—RECORDATION OF INSTRUMENTS

§ 42–101. Repealed. Dec. 30, 1963, 77 Stat. 774, Pub. L. 88–243, § 15(a)(11), effective Jan. 1, 1965.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 42–104.

§ 42–103. Repealed. Dec. 30, 1963, 77 Stat. 774, Pub. L. 88–243, § 15(a)(11), effective Jan. 1, 1965.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 42–104.

NOTES TO DECISIONS

Unrecorded conditional sales contract

An unrecorded conditional sales contract is valid against all except third persons acquiring title [purchasers for value] without notice, and it has long been settled that prior mortgagees, in whose stead trustees stand, are not, nor do they occupy position of third parties, since they are in no sense purchasers who have given value for property acquired subsequent to their mortgage. *The Hobart Mfg. Co.* v. *A. Vozeolas and J. Hillman* (D.C. App. 1969, 255 A. 2d 502).

In a case where a conditional seller of a bakery mixer took in trade a mixer which had been secured by a chattel deed of trust but did not record the conditional sale, and after the buyer had defaulted in payment to seller of original mixer the trustees contacted an auctioneer to inventory the property and to publicly advertise the auction, and though inventory was taken the discrepancy in serial numbers of mixer was not detected, and new mixer was sold and proceeds remitted to secured parties, the trustees, as parties to conversion of conditional seller's mixer, could be sued for its value, however, since the value of the mixer exceeded the unpaid balance of conditional sales contract, conditional seller was entitled to recover only the amount due under its contract. *Id.*

§ 42–107. False statements—Penalty.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TITLE 43.—PUBLIC UTILITIES

Chapter 1.—DEFINITION OF TERMS AND APPLICATION OF LAW

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–722, 29–240, 43–101 to 43–123, 43–202, 43–204, 43–206, 43–207, 43–209, 43–303, 43–309 to 43–311, 43–317, 43–319, 43–322, 43–329, 43–401, 43–405 to 43–407, 43–411, 43–418, 43–501, 43–704, 43–712, 43–801, 43–803, 43–807, 43–808, 43–901, 43–904 to 43–907, 43–910, 43–911, 43–913, 43–1002, 43–1003, 43–1005 to 43–1007.

§ 43–104. Service.

NOTES TO DECISIONS

Service, defined

Advertising published in the classified telephone directory did not constitute a "service" and the Public Service Commission did not have statutory jurisdiction to regulate the rates charged for advertising in the classified directory. *The Classified Directory Subscribers Association et al.* v. *Public Service Commission of the District of Columbia* (1966, 274 F. Supp. 261; aff'd 383 F. 2d 510).

Chapter 2.—CREATION OF PUBLIC SERVICE COMMISSION — MEMBERS — COUNSEL — EMPLOYEES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–722, 29–240, 43–101 to 43–123, 43–202, 43–204, 43–206, 43–207, 43–209, 43–303, 43–309 to 43–311, 43–317, 43–319, 43–322, 43–329, 43–401, 43–405 to 43–407, 43–411, 43–418, 43–501, 43–704, 43–712, 43–801, 43–803, 43–807, 43–808, 43–901, 43–904 to 43–907, 43–910, 43–911, 43–913, 43–1002, 43–1003, 43–1005 to 43–1007.

§ 43–201. Members — Eligibility of Commissioners — Oath.

The Public Service Commission of the District of Columbia shall be composed of three commissioners as follows: (1) The Engineer Commissioner of the District of Columbia, and (2) two persons appointed by the President, by and with the advice and consent of the Senate. Each of the appointed commissioners shall receive a salary at the rate of $7,500 per annum. Of the two commissioners first appointed after December 15, 1926, one shall be appointed for a term of two years, and one for a term of three years, commencing July 1, 1926. The terms of office of all successors shall expire three years after the expiration of the terms for which their predecessors were appointed; but any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the unexpired term of his predecessor. The commission shall at least biennialy elect a chairman by a majority vote of its members. No commissioner, other than the said Engineer Commissioner of the District of Columbia, shall, during his term of office, hold any other public office. The commissioners of the District of Columbia shall furnish the Public Service Commissioner with suitable offices and quarters. No person, other than the said Engineer Commissioner of the District of Columbia, shall be eligible to the office of commissioner of the Public Service Commission who has not been a bona fide resident of the District of Columbia for a period of at least three years next preceding his appointment or who has voted or claimed residence elsewhere during such period. No person shall be eligible to the office of commissioner of said Public Service Commission who is, or who shall have been during a period of five years next preceding his appointment, directly or indirectly interested in any public utility operating, owning, or having an interest in property in the District of Columbia; or in any stock, bond, mortgage, security, or contract of any such public utility. If any such commissioner shall voluntarily become so interest, his office shall ipso facto become vacant; and if any such commissioner shall become so interested otherwise than voluntarily he shall, within a reasonable time, divest himself of such interest, and if he fails to do so his office shall become vacant. Before entering upon the duties of his office each commissioner, the secretary of the commission, the counsel of the commission and every employee of said commission shall take and subscribe the constitutional oath of office, and shall in addition thereto make oath or affirmation before and file with the clerk of the Superior Court of the District of Columbia that he is not pecuniarily interested, voluntarily or involuntarily, directly or indirectly, in any public utility in the District of Columbia. (Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 97(a); Dec. 15, 1926, 44 Stat. 920, ch. 8, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(39)(A), 84 Stat. 572.)

AMENDMENT

1970—Section 155(c)(39)(A) of Act June 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

APPLICABILITY OF AMENDMENTS MADE TO CERTAIN SECTIONS OF TITLE 43

Section 199(b)(6) of Pub. L. 91–358 provided: (6) The amendments made by subpart 2 of part D of this title to section 8 of the Act of March 4, 1913, shall not apply with respect to proceedings brought in the United States District Court for the District of Columbia on or before the effective date of this title.

[The D.C. Code sections amended by subpart 2 of part D of Pub. L. 91–358 relating to section 8 of the Act of Mar. 4, 1913, are: 43–201, 43–401, 43–405, 43–418, 43–420, 43–704, 43–705, 43–707, 43–708.]

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS OF THE BOARD OF COMMISSIONERS

Section 501 of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"Status of certain agencies. (a) Functions now vested in any agency listed in subsection (b) of this section, or in any officer or body of or under such agency, shall remain so vested; but all functions of the Board of Commissioners of the District of Columbia and all functions of the President of that Board or of any other member of the Board, relating to the listed agency or its functions or to an officer or body thereof or to the functions of such officer or body shall be deemed to be transferred by Part IV of this reorganization plan.

"(b) The following agencies of the Corporation are the agencies referred to in subsection (a) of this section:

"(1) Board of Education (including the public school system)

"(2) Board of Library Trustees (including the public libraries)

"(3) Recreation Board

"(4) Public Service Commission

"(5) Zoning Commission

"(6) Zoning Advisory Council

"(7) Board of Zoning Adjustment

"(8) Office of the Recorder of Deeds

"(9) Armory Board"

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–203.

§§ 43–202 to 43–208.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 47–2331 [erroneously described in subsection (f) as section 40–1001 to 40–1007].

§ 43–209. Authority of District of Columbia Commissioners to continue—Ordinances and regulations to remain in force until modified by the Public Service Commission.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2331 [erroneously described in subsection (f) as section 40–1001 to 40–1007].

Chapter 3.—SERVICE, VALUATION, ACCOUNTS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–722, 29–240, 43–101 to 43–123, 43–202, 43–204, 43–206, 43–207, 43–209, 43–303, 43–309 to 43–311, 43–317, 43–319, 43–322, 43–329, 43–401, 43–405 to 43–407, 43–411, 43–418, 43–501, 43–704, 43–712, 43–801, 43–803, 43–807, 43–808, 43–901, 43–904 to 43–907, 43–910, 43–911, 43–913, 43–1002, 43–1003, 43–1005 to 43–1007.

§ 43–301. Public utilities — Service and facilities — Charges to be reasonable, just, and nondiscriminatory—To obey orders of Commission.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 46–303.

NOTES TO DECISIONS

Service, defined

"Yellow Pages" advertising, was not a public utility "service" or "facility" within statute providing that every public utility doing business within the District of Columbia is required to furnish service and facilities in all respects just and reasonable, and hence the public service commission lacked jurisdiction to regulate the rates and practices of telephone company with respect to its yellow pages classified telephone directory. *The Classified Directory Subscribers Association* v. *Public Service Commission of the District of Columbia* (1967, 383 F. 2d 510, 127 U.S. App. D.C. 315).

Not all services offered by a public utility are regulable under statute providing that every public utility doing business within the District of Columbia is required to furnish service and facilities in all respects just and reasonable. *Id.*

§ 43–303. Commission to compel compliance with chapters 1–10 of this title, with laws, ordinances, and charter—Criminal liability continued.

NOTES TO DECISIONS

Service, defined

"Yellow Pages" advertising was not a public utility "service" or "facility" within statute providing that every public utility doing business within the District of Columbia is required to furnish service and facilities in all respects just and reasonable, and hence the public service commission lacked jurisdiction to regulate the rates and practices of telephone company with respect to its yellow pages classified telephone directory. *The Classified Directory Subscribers Association* v. *Public Service Commission of the District of Columbia* (1967, 383 F. 2d 510, 127 U.S. App. D.C. 315).

Not all services offered by a public utility are regulable under statute providing that every public utility doing business within the District of Columbia is required to furnish service and facilities in all respects just and reasonable. *Id.*

§ 43–325. Copy of rate schedule to be available for public inspection.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–326.

§ 43–329. Utility not to receive greater or less compensation than fixed in schedule.

NOTES TO DECISIONS

Tenants committee

Since substandard units had different utility equipment, rented at different prices, and had varying number of occupants, and there was no recognized formula for distributing gas and electrical charges among the users, it is not appropirate for the court to order tenants to organize committee which would enter into contracts with utility companies for continuation of services, in tenant's proceeding for equitable relief directing that utility services be continued after owner refused to honor utility bills. *A. Masszonia* v. *W. E. Washington, Commissioner, et al.* (1970, 315 F. Supp. 529).

Chapter 4.—RATES, EXAMINATIONS, INVESTIGATIONS, AND HEARINGS

Sec.

43–401. Existing rates continued—Schedules to be filed—Application to change rules—Review of ruling by Court of Appeals.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–722, 29–240, 43–101 to 43–123, 43–202, 43–204, 43–206, 43–207, 43–209, 43–303, 43–309 to 43–311, 43–317, 43–319, 43–322, 43–329, 43–401, 43–405 to 43–407, 43–411, 43–418, 43–501, 43–704, 43–712, 43–801, 43–803, 43–807, 43–808, 43–901, 43–904 to 43–907, 43–910, 43–911, 43–913, 43–1002, 43–1003, 43–1005 to 43–1007.

§ 43–401. Existing rates continued—Schedules to be filed—Application to change rates—Review of ruling by Court of Appeals.

First, unless the commission shall otherwise order, it shall be unlawful for any public utility within the District of Columbia to demand, collect, or receive a greater compensation for any service than the charge fixed on the lowest schedule of rates for the same service under the law in force on March 4, 1913; second, every public utility in the District of Columbia shall, within thirty days after March 4, 1913, file in the office of the commission copies of all

schedules of rates and charges, including joint rates, in force on March 4, 1913; third, any public utility desiring to advance or discontinue any such rate or rates may make application to the commission in writing, stating the advance in or discontinuance of the rate or rates desired, giving the reasons for such advance or discontinuance; fourth, upon receiving such application the commission shall fix a time and place for hearing, and give such notice to interested parties as shall be proper and reasonable; if, after such hearing and investigation, the commission shall find that the change or discontinuance applied for is reasonable, fair, and just, it shall grant the application, either in whole or in part; fifth, any public utility being dissatisfied with any order of the commission made under the provisions of this section may commence a proceeding against it in the District of Columbia Court of Appeals in the manner as is in chapters 1–10 of this title provided, which action shall be tried and determined in the same manner as is in chapters 1–10 of this title provided. (Mar. 4, 1913, 37 Stat. 994, ch. 150, § 8, par. 94; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 168(a)(4), 84 Stat. 588.)

AMENDMENT

1970—Section 168(a)(4) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "District of Columbia Court of Appeals".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to section 43–201.

§ 43–405. Production of records of utilities compellable by summons—Attendance of witnesses—Duties of United States attorney and corporation counsel.

The commission may require, by order or subpoena, to be served upon any public utility in the same manner that a summons is served in a civil action in the Superior Court of the District of Columbia, the production within the District of Columbia at such time and place as it may designate of any books, accounts, papers, or records kept by such public utility in any office or place without the District of Columbia, or verified copies in lieu thereof, if the commission shall so order, in order that an examination thereof may be made by the commission under its direction. Any public utility failing or refusing to comply with any order or subpoena shall for each day it shall so fail or refuse forfeit and pay to the District of Columbia the sum of one hundred dollars, to be recovered in an action to be brought in the name of said District.

Attendance of witnesses and the production of such documentary evidence may be required from any place in the United States. And in case of disobedience to a subpoena the commission, or any party to a proceeding before the commission may invoke the aid of any court of the United States or the Superior Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of books, papers, and documents under the provisions of this section. And the said commission is hereby given power to call on any United States attorney, the corporation counsel of the District of Columbia or any counsel of the commission to enforce the provisions of chapters 1–10 of this title in the proper courts of the United States, and on such call it shall be the duty of the said United States attorney, corporation counsel, or any counsel of the Commission, upon request of said commission, to enforce the provisions of this section, the cost and expenses incurred to be paid out of the appropriations for the expenses of the courts of the United States. (Mar. 4, 1913, 37 Stat. 982, ch. 150, § 8, par. 35; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 909, 991, ch. 646, §§ 1, 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(39)(B), 84 Stat. 572.)

AMENDMENT

1970—Section 155(c)(39)(B) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 43–201.

§ 43–406. Appointment of investigating agents — Powers.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–418.

§ 43–410. Notice as to hearings—Compulsory attendance of witnesses.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–411, 43–416, 43–702.

§ 43–412. Expenses of investigation or revaluation to be borne by utility—Deposit for costs—Limitation of expenditures in rate and revaluation hearings.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–711.

§ 43–418. Commissioners and agents may administer oaths, issue subpoenas—Proceeding to punish for contempt.

Each of the commissioners and every agent provided for in section 43–406, for the purposes mentioned in chapters 1–10 of this title, shall have power to administer oaths, certify to official acts, issue subpoenas, compel the attendance of witnesses and the production of books, accounts, papers, records, documents, and testimony. In case of disobedience on the part of any person or persons to comply with any order of the commission or any commissioner, or any subpoena, or on the refusal of any witness to testify to any matter regarding which he may be interrogated before the commission or its agent authorized, it shall be the duty of the Superior Court of the District of Columbia, or a judge thereof, on application of a commissioner, to compel obedience by attachment proceedings for contempt, as in the case of disobedience of the requirements of a subpoena issued from such court or a refusal to testify therein. (Mar. 4, 1913, 37 Stat. 984, ch. 150, § 8, par. 48; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(39)(C), 84 Stat. 572.)

AMENDMENT

1970—Section 155(c)(39)(C) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 43–201.

§ 43–420. Testimony may be taken by deposition.

The commission or any party may, in any investigation, cause the depositions of witnesses residing within or without the District of Columbia to be taken in the manner prescribed by law for like depositions in civil actions in the Superior Court of the District of Columbia. (Mar. 4, 1913, 37 Stat. 985, ch. 150, § 8, par. 50; July 29, 1970, Pub. L. 91–358, title I, § 163(i)(1), 84 Stat. 583.)

AMENDMENT

1970—Section 163(i)(1) of Act July 29, 1970, Public Law 91–358 amended section by striking out "circuit courts" and inserting in lieu thereof "the Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 43–201.

Chapter 5.—SALE AND MERGER OF UTILITIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–722, 29–240, 43–101 to 43–123, 43–202, 43–204, 43–206, 43–207, 43–209, 43–303, 43–309 to 43–311, 43–317, 43–319, 43–322, 43–329, 43–401, 43–405 to 43–407, 43–411, 43–418, 43–501, 43–704, 43–712, 43–801, 43–803, 43–807, 43–808, 43–901, 43–904 to 43–907, 43–910, 43–911, 43–913, 43–1002, 43–1003, 43–1005 to 43–1007.

§ 43–502. Antimerger law.

It shall be unlawful for any foreign public utility corporation, or for any foreign or local holding corporation, or for any local street railroad corporation, gas corporation, electric corporation, telephone corporation, telegraph corporation, or any other local public utility corporation, directly or indirectly, to own, control, or hold or vote stock or bonds of any public utility corporation organized under any general incorporation law or special Act of the United States or authorized under any law of the United States to do business in the District of Columbia, except as heretofore or hereafter expressly authorized by Congress; and it shall be unlawful for any public utility corporation organized or authorized as aforesaid to sell or transfer any portion of its stock or bonds to any other public utility corporation or holding corporation whatsoever, unless heretofore or hereafter expressly authorized by Congress so to do; and every contract, transfer, agreement to transfer, or assignment by any said public utility corporation organized or authorized as aforesaid of any portion of its stock or bonds without such authority shall be utterly void and of no effect. The Superior Court of the District of Columbia, on application of the District of Columbia by its commissioners or attorney, or on application of the United States by its proper officer, or on application of any shareholder interested in any such corporations, shall have jurisdiction in equity to dissolve any public utility corporation organized under any general incorporation law or special section[1] of the United States, or authorized under any law of the United States to do business in the District of Columbia, for violation of any of the provisions of this section or of their charters; and further, to require any foreign public utility corporation, or foreign or local holding corporation which owns, holds, or controls, or which shall hereafter own, hold, or control any such stock or bonds contrary to any of the provisions of this section, to sell or dispose of the same and to refrain from voting such stock or bonds: *Provided,* That in case the allegations in any bill filed in said court relate to the ownership of stock or bonds of a local corporation by any foreign corporation, then it must be shown to the satisfaction of the court that such ownership includes at least twenty per centum of the capital stock of the local coropration.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 168(a)(5), 84 Stat. 588.)

AMENDMENT

1970—Section 168(a)(5) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to section 43–201.

§ 43–503. Merger of street railways permitted.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–502.

Chapter 6.—GAS AND ELECTRIC CORPORATIONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–722, 29–240, 43–101, to 43–123, 43–202, 43–204, 43–206, 43–207, 43–209, 43–303, 43–309 to 43–311, 43–317, 43–319, 43–322, 43–329, 43–401, 43–405 to 43–407, 43–411, 43–418, 43–501, 43–704, 43–712, 43–801, 43–803, 43–807, 43–808, 43–901, 43–904 to 43–907, 43–910, 43–911, 43–913, 43–1002, 43–1003, 43–1005 to 43–1007.

Chapter 7.—ORDERS AND COURT PROCEEDINGS

Sec.

43–704 Application to Court of Appeals for instructions—Application for reconsideration.
43–705 Appeal to Court of Appeals from certain orders—Precedence over other civil causes—Proceeding when additional evidence proper—Statement to accompany decision—Commission not liable for costs or damages.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–722, 29–240, 43–101 to 43–123, 43–202, 43–204, 43–206, 43–207, 43–209, 43–303, 43–309 to 43–311, 43–317, 43–319, 43–322, 43–329, 43–401, 43–405 to 43–407, 43–411, 43–418, 43–501, 43–704, 43–712, 43–801, 43–803, 43–807, 43–808, 43–901, 43–904 to 43–907, 43–910, 43–911, 43–913, 43–1002, 43–1003, 43–1005 to 43–1007.

§ 43–704. Application to Court of Appeals for instructions—Application for reconsideration.

If at any time the commission shall be in doubt of the elements of value to be by them considered in arriving at the true valuation under the provisions of chapters 1–10 of this title, they are authorized and

[1] So in original. Probably should read "Act."

empowered to institute a proceeding in equity in the District of Columbia Court of Appeals petitioning said court to instruct them as to the element or elements of value to be by them considered as aforesaid, and the particular utility under valuation at the time shall be made party defendant in said action.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 168(a)(1), 84 Stat. 588.)

AMENDMENT

1970—Section 168(a)(1) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "District of Columbia Court of Appeals".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 43–201.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–707, 43–710, 43–711.

§ 43–705. Appeal to Court of Appeals from certain orders—Precedence over other civil causes—Proceeding when additional evidence proper—Statement to accompany decision—Commission not liable for costs or damages.

The Dictrict of Columbia Court of Appeals shall have jurisdiction to hear and determine any appeal from an order or decision of the Commission. Any public utility or any other person or corporation affected by any final order or decision of the Commission, other than an order fixing or determining the value of the property of a public utility in a proceeding solely for that purpose, may, within sixty days after final action by the Commission upon the petition for reconsideration, file with the clerk of the District of Columbia Court of Appeals a petition of appeal setting forth the reasons for such appeal and the relief sought; at the same time such appellant shall file with the Commission notice in writing of the appeal together with a copy of the petition. Within twenty days of the receipt of such notice of appeal the Commission shall file with the clerk of the said court the record, including a transcript of all proceedings had and testimony taken before the Commission, duly certified, upon which the said order or decision of the Commission was based, together with a statement of its findings of fact and conclusions upon the said record, and a copy of the application for reconsideration and the orders entered theron: *Provided,* That the parties, with the consent and approval of the Commission, may stipulate in writing that only certain portions of the record be transcribed and transmitted. Within this period the Commission or any other interested party shall answer, demur, or otherwise move or plead. Thereupon the appeal shall be at issue and ready for hearing. All such proceedings shall have precedence over any civil cause of a different nature pending in said court, and the District of Columbia Court of Appeals shall always be deemed open for the hearing thereof. Any such appeal shall be heard upon the record before the Commission, and no new or additional evidence shall be received by the said court. The said court, or any judge or judges thereof, before whom any such appeal shall be heard, may require and direct the Commission to receive additional evidence upon any subject related to the issues on said appeal concerning which evidence was improperly excluded in the hearing before the Commission or upon which the record may contain no substantial evidence. Upon receipt of such requirement and direction the Commission shall receive such evidence and without unreasonable delay shall transmit to the said court the findings of fact made thereon by the Commission and the conclusions of the Commission upon the said facts.

Upon the conclusion of its hearings of any such appeal the court shall either dismiss the said appeal and affirm the order or decision of the Commission or sustain the appeal and vacate the Commission's order or decision. In either event the court shall accompany its order by a statement of its reasons for its action and in the case of the vacation of an order or decision of the Commission the statement shall relate the particulars in and the extent to which such order or decision was defective.

Said Commission shall not, nor shall any of its members, officers, agents, or employees, be taxed with any costs, nor shall they or any of them be required to give any supersedeas bond or security for costs or damages on any appeal whatsoever. Said Commission, or any of its members, officers, agents, or employees, shall not be liable to suit or action or for any judgment or decree for any damages, loss, or injury claimed by any public utility or person, nor required in any case to make any deposit for costs or pay for any service to the clerks of any court or to the marshal of the United States. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 65; Aug. 27, 1935, 49 Stat. 882, ch. 742, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, §§ 163(i)(2), 168(a)(2), 84 Stat. 583, 588.)

AMENDMENTS

1970—Section 163(i)(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out the third paragraph. For text of stricken paragraph, see 1967 edition of the code.

Section 168(a)(2) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "District of Columbia Court of Appeals".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101 and note to 43–201.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–710, 43–711.

NOTES TO DECISIONS

Public interest

Finding that gas rates, embodied in contractual arrangements reached between gas company and apartment and office building owner for supplying steam and chilled water for heating and air-conditioning of building to be constructed, were lawful and not against the public interest as supported by substantial evidence and as not arbitrary or capricious. *Association of Fair Competitive Practices In Air Conditioning, Inc.* v. *Public Service Commission of the District of Columbia, et al.* (1967, 372 F. 2d 934, 125 U.S. App. D.C. 361).

Scope of inquiry

District of Columbia Public Service Commission was not, out of issues generated in case respecting approval of rate embodied in contractual arrangements between gas company and owner of apartment and office building for

the supplying of steam and chilled water for heating and air-conditioning building, required to range beyond the scope of application before it and to make a wide ranging inquiry into general merchandising practices of gas company with respect to air-conditioning equipment. *Association of Fair Competitive Practices In Air Conditioning, Inc.* v. *Public Service Commission of the District of Columbia, et al.* (1967, 372 F. 934, 125 U.S. App. D.C. 361).

§ 43–706. Appeal limited to questions of law.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–710, 43–711.

§ 43–707. Orders to remain in force pending appeal—Suspension of order.

All orders and decisions of the Commission shall remain in full effect, except as provided in section 43–704 hereof, unless and until they are suspended, superseded, or rescinded by the Commission or are vacated by lawful order of the District of Columbia Court of Appeals: *Provided,* That if in any petition made to the said court appealing from an order or decision of the Commission it be alleged that substantial and irreparable property loss would be occasioned to the petitioner by the operation of the said order pending the determination of the said appeal, the court shall set a time and place for hearing upon the said allegation after not less than three days' notice to the Commission (during which period the execution of the order or decision shall be stayed), and the said court may then, upon a clear showing of the irreparable and substantial property loss as alleged, suspend the effective date of the said order. No such suspension shall be for a greater period than sixty days without further order after notice or hearing by the court. In the event of the issuance of an order suspending the operation of any order of the Commission, the court may include therein such provision as it deems advisable for the preservation of records or accounts and the impounding or otherwise securing of moneys necessary to give effect to the order of the Commission in the event the said order is sustained. (Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, par. 67; Aug. 27, 1935, 49 Stat. 884, ch. 742, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 168(a)(3), 84 Stat. 588.)

AMENDMENT

1970—Section 168(a)(3) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "District of Columbia Court of Appeals".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101 and note to 43–201.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–710, 43–711.

§ 43–708. Repealed. July 29, 1970, Pub. L. 91–358, § 163(i)(3), title I, 84 Stat. 583.

Section being par. 68 of act Mar. 4, 1913, 37 Stat. 989, ch. 150, § 8, as amended dealt with certification of questions by the Commission to the United States Court of Appeals.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101 and note 43–201.

§ 43–709. Authority of Commission to rescind its order after appeal is filed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–710, 43–711.

§ 43–710. Method of review exclusive.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–711.

Chapter 8.—ISSUANCE OF SECURITIES

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–722, 29–240, 43–101 to 43–123, 43–202, 43–204, 43–206, 43–207, 43–209, 43–303, 43–309 to 43–311, 43–317, 43–319, 43–322, 43–329, 43–401, 43–405 to 43–407, 43–411, 43–418, 43–501, 43–704, 43–712, 43–801, 43–803, 43–807, 43–808, 43–901, 43–904 to 43–907, 43–910, 43–911, 43–913, 43–1002, 43–1003, 43–1005 to 43–1007.

Chapter 9.—PENAL PROVISIONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–722, 29–240, 43–101 to 43–123, 43–202, 43–204, 43–206, 43–207, 43–209, 43–303, 43–309 to 43–311, 43–317, 43–319, 43–322, 43–329, 43–401, 43–405 to 43–407, 43–411, 43–418, 43–501, 43–704, 43–712, 43–801, 43–803, 43–807, 43–808, 43–901, 43–904 to 43–907, 43–910, 43–911, 43–913, 43–1002, 43–1003, 43–1005 to 43–1007.

§ 43–906. Penalty for failure or refusal to perform duty enjoined or to obey order of Commission.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–907, 43–908.

§ 43–907. Prosecution and penalty for violation of rules.

Prosecution for violation of any rule, order, or regulation made, adopted, or approved by the Public Service Commission under authority of chapters 1–10 of this title, or section 40–603, or sections 47–2301 to 47–2328, 47–2331 to 47–2350, or by the Joint Board under authority of section 40–603 or sections 47–2301 to 47–2328, 47–2331 to 47–2350, shall be on information in the Superior Court of the District of Columbia, in the name of the District of Columbia, by the corporation counsel or any of his assistants. Any person, corporation, or public utility violating any such rule, order, or regulation shall, upon conviction, be fined not more than $200: *Provided,* That the provisions of sections 43–907, 43–908 shall not be construed to apply to rules, orders, or regulations adopted or promulgated by the Commissioners of the District of Columbia which are not specifically required to be referred to the Joint Board or subject to the approval of such board: *Provided further,* That with respect to orders, rules, or regulations made or adopted by the Public Service Commission under authority of chapters 1–10 of this title, this section shall be construed to apply only to such orders, rules, or regulations as are subject to the penalties specifically provided in section 43–906. (Apr. 5, 1939, 53 Stat. 569, ch. 40, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

ABOLITION OF JOINT BOARD

The Joint Board referred to in this section was abolished by section 503(c) of the Reorganization Plan No. 3 of

1967, effective November 3, 1967. The Plan is set out in the appendix to title 1.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–908.

§ 43–908. Construction of sections 43–906 and 43–907.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–907.

Chapter 10.—GENERAL PROVISIONS

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 11–722, 29–240, 43–101 to 43–123, 43–202, 43–204, 43–206, 43–207, 43–209, 43–303, 43–309 to 43–311, 43–317, 43–319, 43–322, 43–329, 43–401, 43–405 to 43–407, 43–411, 43–418, 43–501, 43–704, 43–712, 43–801, 43–803, 43–807, 43–808, 43–901, 43–904 to 43–907, 43–910, 43–911, 43–913, 43–1002, 43–1003, 43–1005 to 43–1007.

§ 43–1003. Chapters to be liberally construed—Separability of provisions.

NOTES TO DECISIONS

Service, defined

Advertising published in the classified telephone directory did not constitute a "service" and the Public Service Commission did not have statutory jurisdiction to regulate the rates charged for advertising in the classified directory. *The Classified Directory Subscribers Association et al.* v. *Public Service Commission of the District of Columbia* (1966, 274 F. Supp. 261; aff'd 383 F. 2d 510).

Chapter 11.—ELECTRIC LIGHT AND POWER COMPANIES—SPECIAL ACTS

§ 43–1101. Extension of overhead wires in Georgetown—Extension of underground conduits in Mount Pleasant.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(317) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in the particulars described in par. 317, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–1102.

§ 43–1102. Conduits and overhead wires for electric lighting prohibited in streets—House connections authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1105. Electric-lighting wires east of Rock Creek.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(318) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 43–1106. Permits for repair, extension, and enlargement of conduits.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(319) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 43–1107. Extension of conduits—Ducts for use of fire and police wires—Maximum price of current—Additional charge for nonpayment of bills.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(320) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 43–1108. Use of conduits of Washington Railway and Electric Company by Potomac Electric Power Company.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 12.—GAS COMPANIES—SPECIAL ACTS

§ 43–1202. Additional laboratories for testing gas of Washington Gas Light and Georgetown Gas Light Companies—Payment of expenses incident thereto.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 13.—PRIVATE CONDUITS

§ 43–1301. Conditions under which private conduits may be laid.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–1303.

§ 43–1302. Refusal to remove conduits—Penalty.

On violation of any of the provisions or restrictions of section 43–1301 the said Commissioners shall require the permittee, after thirty days' notice, to abandon the use of said conduits or pipes and remove them from the alley or alleys in which they are located, and if said permittee shall neglect or refuse to remove said conduits or pipes and place the surface of the alley in good condition within sixty days after the date of said notice, the said permittee shall be deemed guilty of a misdemeanor, and shall be liable to a fine of ten dollars for each and every day that said conduits or pipes are allowed to remain in the alley, or the said alley shall remain out of repair, which fine shall be recovered in the Superior Court of the District of Columbia, in the name of said District, as other fines and penalties are now recovered in said court. (May 26, 1900, 31 Stat. 218, ch.

587, § 2; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I; § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–1303.

Chapter 14.—TELEGRAPH AND TELEPHONE COMPANIES

§ 43–1401. Additional telegraph and telephone wires prohibited on streets—Extensions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–1102.

§ 43–1402. Removal of telephone poles and wires—Area of removal—Duties of Commissioners—Extension of conduits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1403 to 43–1408.

§ 43–1403. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telephone companies.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1402, 43–1404 to 43–1406, 43–1408.

§ 43–1404. Penalties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1402, 43–1403, 43–1405, 43–1406, 43–1408.

§ 43–1405. Erection and maintenance of telephone poles in alleys—Poles outside designated limit—Temporary permits.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1402, 43–1403, 43–1406, 43–1408.

§ 43–1406. Regulations for inspection—Ducts for use of fire and police wires.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(321) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to prescribing regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1402, 43–1403, 43–1405, 43–1408.

§ 43–1407. Repairs and renewals.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1402, 43–1403, 43–1405, 43–1406, 43–1408.

§ 43–1408. Right to alter, amend, or repeal reserved.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1402, 43–1403, 43–1405, 43–1406.

§ 43–1409. Removal of telegraph poles and wires—Duties of Commissioners—Extension of conduits.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1410 to 43–1412, 43–1414 to 43–1417.

§ 43–1410. Plans of conduits to be submitted to Commissioners—Permits—Removal of poles—Wires for house connections—Telegraph companies.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1409, 43–1412, 43–1414, 43–1416, 43–1417.

§ 43–1411. Penalties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1409, 43–1410, 43–1412, 43–1414, 43–1416, 43–1417.

§ 43–1412. Erection and maintenance of telegraph poles in alleys—Poles outside designated limits—Temporary permits.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1409, 43–1410, 43–1414, 43–1416, 43–1417.

§ 43–1413. Conduits in public parks or reservations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1409, 43–1410, 43–1412, 43–1414, 43–1416, 43–1417.

§ 43–1414. Regulations for inspection—Ducts for use of fire and police wires.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(322) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to prescribing regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan.

For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1409, 43–1410, 43–1412, 43–1416, 43–1417.

§ 43–1415. Repairs and renewals.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1409, 43–1410, 43–1412, 43–1414, 43–1416, 43–1417.

§ 43–1416. Right to alter, amend, or repeal reserved—Rights under 43 U.S.C. § 1 et seq. preserved.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1409, 43–1410, 43–1412, 43–1414, 43–1417.

§ 43–1417. Rights to build and lay conduits not to be paid for in event of condemnation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1409, 43–1410, 43–1412, 43–1414, 43–1416.

Chapter 15.—WATER SUPPLY, ASSESSMENTS, AND RATES

Sec.

43–1520c. District Council to have authority to fix water rates.

§ 43–1501. Water mains, pipes, and fire plugs—Commissioners to have power to erect.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1503. Water supply—Rules and regulations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(323) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to making regulations for the proper distributions of water, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 43–1504. Fiscal year of water department.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(324) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to determining the frequency of levying and collecting water rates, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 43–1506. Water registrar.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1510. Water mains and service sewers erected at discretion of Commissioners—Costs assessed against abutting property.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1513, 43–1515 to 43–1517, 43–1602,

§ 43–1511. Assessments for water mains.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1513, 43–1515 to 43–1517, 43–1602.

§ 43–1512. Assessor to give notice of assessments.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1513, 43–1515 to 43–1517, 43–1602.

§ 43–1513. Water main and service sewer assessments payable in three installments.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1515 to 43–1517, 43–1602.

§ 43–1514. Assessment of property in county of Washington for water mains and service sewers.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1513, 43–1515 to 43–1517, 43–1602.

§ 43–1515. Relevying assessments when assessments declared void.

The assessor of the District of Columbia is hereby authorized and directed in cases where water-main assessments, or assessments for service sewers, may be quashed, canceled, set aside, or declared void by the Superior Court of the District of Columbia, or may otherwise be canceled or set aside, by reason of an imperfect or erroneous description of the lot or parcel of ground against which the same shall have been levied, by reason of such tax or assessment not having been authenticated by the proper officer or by reason of a defective return of service of notice, or for any technical reason other than the right of the authorities of the District of Columbia to levy assessment or lay the main or service sewer in respect of which assessment was levied, to relevy such assessment at the rate and in the manner provided for in sections 43–1510 to 43–1517, inclusive: *Provided,* That such reassessment shall be made within sixty days from date of such cancellation. (Apr. 22, 1904, 33 Stat. 246, ch. 1417, § 7; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 168(b), 84 Stat. 588.)

AMENDMENT

1970—Section 168(b) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1513, 43–1516, 43–1517, 43–1602.

§ 43–1516. Disposal of funds received by collector of taxes.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1513, 43–1515, 43–1517, 43–1602.

§ 43–1517. Definition—Service sewer.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1513, 43–1515, 43–1516, 43–1602.

§ 43–1519. Refund of water rents erroneously paid.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1520. Water rents—Rates.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1520c. District Council to have authority to fix water rates.

The District of Columbia Council is authorized from time to time to fix the rates charged by the District for water and water services furnished by the District water supply system, at such amount as the Council, on the basis of a recommendation made by the Commissioner of the District of Columbia, determines is necessary to meet the expense to the District of furnishing such water and water services. In computing the charge for the consumption of water in excess of the minimum amount allowed for metered service, if such charge is for a period beginning prior to a change in water rates and ending thereafter, the charge for such excess consumption shall be based upon the rate in effect at the time the charge is rendered. Nothing in this title shall be construed to modify the provisions of section 43–1530 relating to the delivery of water from the District water supply system to the Washington Suburban Sanitary Commission. (May 18, 1954, 68 Stat. 101, ch. 218, title I, § 101; Mar. 2, 1962, 76 Stat. 17, Pub. L. 87–408, § 501; Jan. 5, 1971, Pub. L. 91–650, title I, § 105(a), 84 Stat. 1931.)

AMENDMENT

1971—Section 105(a) of Act Jan. 5, 1971, Pub. L. 91–650, amended section—

(1) by striking out the first three sentences of subsection (a) and inserting in lieu thereof the first two sentences above set out; and

(2) by striking out "(a)" in subsection (a) and by repealing subsection (b).

CONTINUATION OF EXISTING WATER AND SEWER RATES

Section 105(d) of act Jan. 5, 1971, Pub. L. 91–650, provided: "Water and sewer rates established under the District of Columbia Public Works Act of 1954 which are in effect on the date of enactment of this Act shall continue in effect until revised by the District of Columbia Council in accordance with that act as amended by this section [amending §§ 43–1520c, 43–1606, and 43–1607(c)]."

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(325) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 43–1521. Commissioners to have authority to collect water rates in advance.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1521a. Additional charge on unpaid water bills.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1521d, 43–1541, 43–1609.

§ 43–1521b. Discontinuance of water service for failure to pay water charges.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1521d, 43–1541, 43–1609.

§ 43–1521c. Lien for water charges.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1521d, 43–1541, 43–1609.

§ 43–1521d. Remedies not exclusive.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–1609.

§ 43–1530. Commissioners authorized to deliver water in nearby Maryland—Contract.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1520c, 43–1529.

§ 43–1531. Delivery of water to Arlington County, Virginia.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–1529.

§ 43–1531a. Delivery of water to Falls Church, Virginia, and adjacent areas—Installation expenses—Payments for water—Revocation of permit.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–1531c.

§ 43–1531c. Acquiring of lands for pipe lines authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1533. Potomac water to be furnished to charitable institutions without charge.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1534. Unlawful tapping of water pipe—Penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–1535.

§ 43–1539. District of Columbia water system defined.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1540. Loans authorized to expand water system.

(a) The Commissioners of the District of Columbia are hereby authorized to accept loans for the District of Columbia from the United States Treasury and the Secretary of the Treasury of the United States is hereby authorized to lend to the Commissioners of the District of Columbia, such sums as may hereafter be appropriated, to finance the expansion and improvement of the water system when sufficient funds therefor are not available from the District of Columbia water fund established by this chapter: *Provided,* That the total principal amount of loans made under the provisions of this section shall not exceed $51,000,000: *And provided further,* That a loan for use in any fiscal year must first be specifically requested of the Congress in connection with the budget submitted for the District of Columbia for that fiscal year, with a full statement of the work contemplated to be done and the need thereof, and must be specifically approved by the Congress. Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in full in the Treasury of the United States to the credit of the said District of Columbia water fund.

* * * * *

(As amended Jan. 5, 1971, Pub. L. 91–650, title I, § 103(d), 84 Stat. 1930.)

AMENDMENT

1971—Section 103(d) of act Jan. 5, 1971, Pub. L. 91–650, amended subsec. (a) by striking out "$35,000,000" and inserting in lieu thereof $51,000,000".

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–1539.

§ 43–1541. Water and water service supplied for the use of the Government of the United States.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 16.—SANITARY SEWAGE WORKS

§ 43–1602. D.C. Sanitary Sewage Works Fund.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–1621.

§ 43–1603. Use of the D.C. Sanitary Sewage Works Fund.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1604. Advances for sanitary sewage works—Reimbursement for amounts advanced.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1605. Service charges for sanitary sewer service—Authority of Commissioners.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(326) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 43–1606. Methods of determination of sanitary sewer service charges.

(a) The sanitary sewer service charges established under the authority of this chapter shall be based on the water consumption of, and water service to, the properties served, and be determined by one of the following methods:

(1) Where water is supplied from the District water supply system at meter rates, the Commissioners shall establish the sanitary sewer service charge as a percentage of the water charge applicable in the District.

(2) Where water is supplied from the District water supply system, which water is not measured by meter, but is supplied at special business and miscellaneous rates, the Commissioners shall establish the sanitary sewer service charge at a percentage of such special business and miscellaneous rates.

(3) For each property using water, all or part of which is from a source or sources other than the District water supply system, the Commissioners shall establish a sanitary sewer service charge separate from and in addition to any sanitary sewer service charge levied under paragraph (1) or (2) of this subsection. Such separate or additional sanitary sewer service charge shall be measured by the quantity of water from the source or sources other than the District water supply system discharged into the District sanitary sewer system from said property. The owner or occupant of each such property shall install and maintain, without cost to the District, a meter or meters to measure the

quantity of water received from other than the water supply system of the District, and the sanitary sewer service charge based upon water received from other than the water supply system of the District shall be the same in amount as would be paid by the owner of a metered property receiving the same quantity of water from the water supply system of the District. No meter shall be installed or be used for such purpose without the approval of the Commissioners. In the event the owner or occupant of property fails or refuses to furnish and properly maintain such meter or meters as are prescribed herein in the manner required by the Commissioners, then the supply of water from the District water supply system to the property or premises may be suspended by the Commissioners and the said supply shall not be restored until the metering of such supplementary water source has been accomplished by the owner or occupant to the satisfaction of the Commissioners, and any costs devolving upon the District as a result of the suspension of service from the District water supply system shall be paid to the District prior to the restoration of water service from the District water supply system.

(4) Wherever a property upon which a sanitary sewer service charge is imposed uses water from the water supply system of the District for an industrial or commercial purposes in such manner that the water so used is not discharged into the sanitary sewage works of the District, the quantity of water so used and not discharged into the sanitary sewage works of the District may be excluded in determining the sanitary sewer service charge on such property, if such exclusion is previously requested in writing by the owner or occupant thereof. Upon such request, the quantity of water so used and not discharged into the sanitary sewage works of the District shall be measured by a device or devices approved by the Commissioners, installed and maintained without cost to the District, and the sanitary sewer service charge to be imposed on such property shall be the amount which would have been charged such property if the amount of water so used and not discharged into the sanitary sewage works of the District had not been included in the amount of water used by such property: *Provided,* That all water from the water supply system of the District used by such property shall be paid for at established rates, whether or not such water is discharged into the sanitary sewage works of the District. Where in the opinion of the Commissioners, it is not practicable to install a measuring device to determine continuously the quantity of water used for such industrial or commercial purposes and not discharged into the sanitary sewage works of the District, the Commissioners shall determine periodically, in such manner and by such methods as the Commissioners may prescribe, the quantity of water from the water supply system of the District discharged into the sanitary sewage works of the District, and the sanitary sewer service charge shall be based on such estimated quantity of water at the percentage authorized by this paragraph. Any dispute as to such estimated amount shall be decided by the Commissioners and such decision shall be final; and in the event the owner or occupant fails to furnish and maintain such measuring devices or to facilitate the periodic determinations by the Commissioners as prescribed herein, then the privilege of excluding some portion of the water used from the District water supply system from the charges for sanitary sewer service shall be forfeited and the charges for sanitary sewer service shall be based on the full amount of the water used from the District water supply system.

(b) Notwithstanding the provisions of subsection (a), the District of Columbia Council is authorized, in its discretion, from time to time to establish one or more sanitary sewer service charges at such amount as the Council, on the basis of a recommendation made by the Commissioner, finds it necessary to meet the expense to the District of furnishing sanitary sewer services, including debt retirement. (May 18, 1954, 68 Stat. 106, ch. 218, title II, § 207; Mar. 2, 1962, 76 Stat. 18, Pub. L. 87–408, § 502; Jan. 5, 1971, Pub. L. 91–650, title I, § 105(b), 84 Stat. 1931.)

CODIFICATION

In subsection (a)(3), the words "paragraph (1) or (2) of this subsection" have been substituted for "paragraph (a) or (b) of this section" to reflect the redesignations made by section 105(b)(4) of the Act of Jan. 5, 1971.

AMENDMENTS

1971—Section 105(b) of act Jan. 5, 1971, Pub. L. 91–650, amended section—

(1) by striking out in paragraph (a) ", but such percentage shall not exceed 75 per centum of the water charge";

(2) by striking out in paragraph (b) ", but such percentage shall not exceed 75 per centum of such rates";

(3) by striking out in paragraph (d) "not more than 75 per centum of the water charge" and inserting in lieu thereof "the amount"; and

(4) by inserting "(a)" immediately before "The sanitary sewer service charges" in the matter preceding paragraph (a), by redesignating paragraphs (a), (b), (c), and (d) as paragraphs (1), (2), (3), and (4), respectively; and by adding at the end of the section a new subsection (b) to read as above set out.

1962—Section 502, act Mar. 2, 1962, 76 Stat. 18, Pub. L. 87–408, amended section by striking "60 per centum" wherever same appeared in this section and substituted in lieu thereof "75 per centum".

CONTINUATION OF EXISTING WATER AND SEWER RATES

Section 105(d) of act Jan. 5, 1971, Pub. L. 91–650, provided: "Water and sewer rates established under the District of Columbia Public Works Act of 1954 which are in effect on the date of enactment of this Act shall continue in effect until revised by the District of Columbia Council in accordance with that Act as amended by this section [amending §§ 43–1520c, 43–1606, and 43–1607(c)]."

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(326) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to establishing charges for the provi-

sion of sanitary sewer service, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–1611.

§ 43–1607. Persons obligated to pay sanitary sewer service charge.

* * * * *

(c) In computing the charge for sanitary sewer service, if such charge is for a period beginning prior to a change in the established sanitary sewer service charge and ending thereafter, the charge shall be based on the rate in effect at the time the charge is rendered. (As amended Jan. 5, 1971, Pub. L. 91–650, title I, § 105(c), 84 Stat. 1931.)

AMENDMENT

1971—Section 105(c) of act Jan. 5, 1971, Pub. L. 91–650, amended subsection (c) of section to read as above set. For provisions of subsection before this amendment, see 1967 edition of the code.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1608. Meters and measuring devices—Maintenance and repairs.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(327) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 43–1609. Additional charge for overdue bills—Enforcement of lien.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(328) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to imposing additional charge for unpaid sanitary sewer service charge, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 43–1610. Sanitary sewer service charges as to churches and institutions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1611. Sanitary sewer service charges for sewer services furnished for direct use by the Government of the United States.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1612. Loans from the United States Treasury for sanitary and combined sewer systems of the District.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1613. Limit of loans for the sanitary and combined sewer systems.

The total principal amount of loans made in connection with the construction, expansion relocation, replacement, or renovation of the sanitary and combined sewer systems of the District shall not exceed $72,00,000. Such loans shall be in addition to any other loans heretofore or hereafter made to the Commissioners for any other purpose, and when advanced shall be deposited in full in the Treasury of the United States to the credit of the D.C. Sanitary Sewage Works Fund. (May 18, 1954, 68 Stat. 108, ch. 218, title II, § 214; Sept. 6, 1960, 74 Stat. 811, Pub. L. 86–711, § 1; Jan. 5, 1971, Pub. L. 91–650, title I, § 103(b), 84 Stat. 1930.)

AMENDMENTS

1971—Section 103(b) of act Jan. 5, 1971, Pub. L. 91–650, substituted "$72,000,000" for "$32,000,000".

1960—Act Sept. 6, 1960, substituted "$32,000,000" for "$5,000,000."

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–1616.

§ 43–1614. Use of funds from D.C. Sanitary Sewage Works Fund for certain sewers—Allocation of cost.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1615. Advancement and availability of funds from loans.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1616. Repayment of loans.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 43–1617. Interest rates on loans.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 43–1623.

§ 43–1618. Commissioners' authority to make regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(329) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 43–1620. Commissioners authorized to develop plan for interceptor and sewer line.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1616, 43–1621 to 43–1624.

§ 43–1621. Potomac interceptor—Acquisition of rights-of-way—Plans and specifications—Operation and maintenance of regional sanitary sewer system—Charges for use of interceptor—Deposit of funds.

* * * * *

(b) The Commissioners are authorized to establish, by agreements with the appropriate agencies of the United States and with the proper authorities of the States and local jurisdictions concerned, charges for the use of the Potomac interceptor, which shall be based upon the costs of operation, maintenance, and amortization of the cost of all planning and construction (including acquisition of rights-of-way) of such interceptor, but which shall exclude such amount as may be appropriated pursuant to section 43–1622. In the event any agency or local authority shall make lump sum payment of its entire portion of the cost, or one or more lump sum payments of the whole or any part of the remainder thereof, of all planning and construction (including acquisition of rights-of-way) of the interceptor, the agreement between the Commissioners and such agency or local authority shall provide or shall be modified to provide, as the case may be, that the charges to such local authority or agency for the use of the Potomac interceptor shall take into consideration such payment by the local authority or agency of its portion of the cost of such planning and construction: *Provided,* That any lump sum payment by an agency or local authority towards its portion of the cost of all planning and construction (including acquisition of rights-of-way), if not of the whole amount thereof or of the remaining balance at the time of payment, shall be in an amount of not less than one-fourth of the agency's or local authority's original entire portion of the planning and construction cost. The Commissioners shall credit all receipts from such charges for the use of the Potomac interceptor to a special fund which is hereby established and which shall be known as the Metropolitan Area Sanitary Sewage Works Fund of the District of Columbia. Such special fund shall be available in such amounts as may be appropriated from time to time for expenses necessary to plan, construct, maintain, and operate the Potomac interceptor.

* * * * *

(As amended Sept. 11, 1967, Pub. L. 90–84, § 1, 81 Stat. 224.)

AMENDMENT

1967—Section 1, act Sept. 11, 1967, amended subsection (b) by adding thereto the second sentence above set out, beginning with "In the event", and ending with "construction cost".

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(330) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) in regard to prescribing regulations respecting the operation and maintenance of the Potomac Interceptor, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1616, 43–1622 to 43–1624.

§ 43–1622. Authorization of appropriations.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1616, 43–1621, 43–1623, 43–1624.

§ 43–1623. Advancement of funds—Crediting and repayment of loans.

(a) The Secretary of the Treasury is authorized and directed to advance to the Commissioners, from time to time, and the Commissioners are authorized to accept as loans, such additional funds, not exceeding a total of $25,000,000, as may be appropriated to carry out the purposes of sections 43–1620 to 43–1624. Any loan advanced under this section shall be credited to the Metropolitan Area Sanitary Sewage Works Fund, and 50 per centum of the total amount of loans made under this section shall be repaid to the Secretary of the Treasury, from the receipts credited to said fund, in substantially equal annual payments including principal and interest, within a period of forty years beginning on July 1 of the second fiscal year following the date on which each such advance is credited to this fund: *Provided,* That interest and principal payments shall be deferred whenever the Secretary of the Treasury finds that the income received from charges for sewage services is inadequate to cover these and other expenses properly chargeable to these receipts, and such deferred interest and principal shall be added to the sums payable to the Secretary of the Treasury in later years. The interest rates on such loans shall be determined in accordance with the provisions of section 43–1617.

(b) The amount of loans which were made under subsection (a) of this section, and which do not have to be repaid—

(1) shall be considered as an additional Federal contribution toward the cost of planning, acquiring rights-of-way for, and constructing, the Potomac interceptor sewer, and

(2) for purposes of section 43–1621(b) shall be treated as having been appropriated pursuant to section 43–1622.

(June 12, 1960, Pub. L. 86–515, § 4, 74 Stat. 211; Sept. 11, 1967, Pub. L. 90–84, § 2, 81 Stat. 225.)

AMENDMENT

1967—Section 2, act Sept. 11, 1967, amended section by adding (a) at the beginning thereof; striking out in the second sentence of subsection (a) "and shall be repaid" and inserting at that point, "and 50 per centum of the total amount of loans made under this section shall be repaid", and adding subsection (b) thereto.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1616, 43–1622, 43–1624.

§ 43–1624. Acquisition of land in Maryland or Virginia for Potomac interceptor—Title to and jurisdiction over land—Condemnation proceedings.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 43–1616, 43–1622, 43–1623.

TITLE 44.—RAILROADS AND OTHER CARRIERS

Chapter 1.—RAILROADS

§ 44–101. Sale of unclaimed freight.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29–101, 29–209, 29–211, 29–215, 29–223, 29–229, 29–233, 29–234, 29–236, 29–238 to 29–240, 44–102, 44–103.

§ 44–102. Disposition of property under court order.

Upon the application of such carrier, verified by affidavit, to the Superior Court of the District of Columbia, setting forth that the place of residence of the owner or consignee of any such freight, baggage, or other property is unknown, or that such freight, baggage, or other property is of such perishable nature, or so damaged, or showing any other cause that shall render it impracticable to give the notice or delay the sale for the period provided in section 44–101, then it shall be lawful for such court to make an order authorizing the sale of such freight, baggage, or other property upon such terms as to notice as the nature of the case may admit of and to such court shall seem meet. (Mar. 3, 1901, 31 Stat. 1289, ch. 854, § 643; June 30, 1902, 32 Stat. 534, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134; Mar. 3, 1921, 41 Stat. 1310, ch. 125, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 157(j), 84 Stat. 575.)

CODIFICATION

The words "holding a special term", near beginning of section, have been omitted as obsolete.

AMENDMENT

1970—Section 157(j) of Act July 29, 1970, Public Law 91–358 amended section (1) By striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia", and

(2) By striking out the proviso.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29–101, 29–209, 29–211, 29–215, 29–223, 29–229, 29–233, 29–234, 29–236, 29–238 to 29–240, 44–103.

§ 44–103. Disposition of proceeds of sale.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29–101, 29–209, 29–211, 29–215, 29–223, 29–229, 29–233, 29–234, 29–236, 29–238 to 29–240.

§ 44–104. Philadelphia, Baltimore and Washington Railroad Company—Abandonment of substation authorized—Repeal of certain laws.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 44–107.

§ 44–105. Waiting room on platform authorized.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 44–104, 44–107.

§ 44–106. Reversion of property to District of Columbia—Adequate walkways provided.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 44–107.

Chapter 2.—STREET RAILWAYS AND BUS LINES

§ 44–202. Street railways to furnish sufficient cars—Power, equipment, appliances, and service—Rules and regulations—Penalties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 44–203.

§ 44–203. Prosecutions to be on information.

Prosecutions for violations of any of the provisions of sections 44–202, 44–206, and 44–207 shall be on information of the Public Service Commission filed in the Superior Court of the District of Columbia by or on behalf of the commission. (May 23, 1908, 35 Stat. 250, ch. 190, § 17; Mar. 4, 1913, 37 Stat. 995, ch. 150, § 8, par. 96; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; Aug. 30, 1964, 78 Stat. 634, Pub. L. 88–503, § 21; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

REFERENCES IN TEXT

In the original, "provisions of sections 44–202, 44–206, and 44–207" referred to in the text read "provisions of this act," sections 4, 15, 16 and 17 of which are classified to sections 44–206, 44–207, 44–202, 44–203, respectively.

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 44–204. Fenders required on streetcars.

TRANSFER OF FUNCTIONS TO COMMISSIONERS

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§§ 44–206, 44–207.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 44–203.

§ 44–208. Reciprocal transfer and trackage agreements.

Every street railway in the District of Columbia whose lines connect, or whose lines may, after August 2, 1894, connect, with the lines of any other street railway company, is hereby required to make reciprocal transfer arrangements with such street railway companies, and to furnish such facilities

therefor as the public convenience may require, and to enter into reciprocal trackage arrangements with such connecting roads. The schedules and compensation shall be mutually agreed upon between the said railway companies, and in case of failure to reach such mutual agreement, the matter in dispute shall be determined by the Superior Court of the District of Columbia, upon petition filed by either party. (Aug. 2, 1894, 28 Stat. 218, ch. 189, § 5; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(40), 84 Stat. 572.)

AMENDMENT

1970—Section 155(c)(40) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 44–211. Removal of disused tracks.

Whenever the track or tracks, or any part thereof, of any street railway company in the District of Columbia shall not have been regularly operated for railway purposes upon a schedule as required by its charter for a period of three months, the Commissioners of said District, in their discretion, may thereupon notify such company to remove said unused tracks and to place the street in good condition; and if such company shall neglect or refuse to remove said tracks and place the street in good condition within sixty days after such notice, the said company shall be deemed guilty of a misdemeanor and shall be liable to a fine of ten dollars for each and every day during which said tracks are permitted to remain upon the street or streets, or said roadway shall remain out of repair, which fine shall be recovered in the Superior Court of the District of Columbia, in the name of said District, as other fines and penalties are recovered in said court. (Mar. 3, 1901, 31 Stat. 1302, ch. 854; § 710; June 30, 1902, 32 Stat. 534, ch. 1329; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 44–210.

§ 44–212. Free transfers.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 44–210.

§ 44–214a. Fares for schoolchildren not over 18 years of age—Formula for adjusting and payment of fare subsidy.

* * * * *

In the case of any common carrier required to furnish transportation to schoolchildren at a reduced fare under this section, the Washington Metropolitan Area Transit Commission shall certify to the Commissioner of the District of Columbia, with respect to each calendar month commencing with September 1968, and ending August 1971, all inclusive, an amount which is the difference between the total of all reduced fares paid during such calendar month to such carrier by schoolchildren in accordance with this section and the amount which would have been paid during that month to such carrier if such fares had been paid at the lowest adult fare established by the Commission for regular route transportation in that month. The certification required by this section shall be made for each such month as soon as practicable following the end thereof. The Commissioner of the District of Columbia, upon receiving any such certification, shall pay the carrier with respect to which that certification was filed an amount equal to the amount contained therein. (As amended Oct. 18, 1968, Pub. L. 90–605, § 1, 82 Stat. 1187.)

AMENDMENT

1968—Act, Oct. 18, 1968, Pub. L. 90–605, amended the second paragraph generally to read as above set out. The paragraph prior to this amendment contained different conditions for application of the fare subsidy. For provisions of this paragraph prior to this amendment see the main edition of the code.

Chapter 3.—PASSENGER MOTOR VEHICLES FOR HIRE

§ 44–301. Passenger motor vehicles for hire to carry insurance — Exceptions — Liability of insurance company absolute.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(331) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to approving form of, and terms and conditions of filing evidence, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2331.

NOTES TO DECISIONS

Applicability to automobile rental agencies

Sections 44–301 et seq., governing liability of insurance companies insuring passenger motor vehicles for hire were designed especially to cover taxicabs and other means of public transportation and were not intended to be a general act covering rental of automobiles without drivers. *M. J. Ryan III, Administrator etc., et al.* v. *E. W. Furey, Administrator etc., et al.* (Penn. Sup. Ct., 1970, 262 A. 2d 305).

Sections 44–301 et seq., requiring passenger motor vehicles for hire to be insured and governing liability of insurer do not apply to automobile rental agencies. *Id.*

Automobile rental corporation

The District of Columbia Taxicab Insurance Act which applies to persons who rent passenger motor vehicles "for hire" had no application to corporation which rented

automobiles, did not sell a transportation service as such and which prohibited its lessees from using the vehicles rented to them for transportation of persons or property "for hire"; "for hire" is usually a phrase of art and, in the field of transportation, denotes a common or contract carrier. *Nationwide Mutual Insurance Company etc.* v. *New Amsterdam Casualty Company etc.* (1967, 376 F. 2d 607, 4th Circuit).

The administrative interpretation of District of Columbia Taxicab Insurance Act that automobile rental corporations are not within the Act is entitled to weight. *Id.*

§ 44–302. Insurance companies must be authorized to do business in District—Bonds to be secured—Insurance companies and corporate sureties must be approved by Superintendent—Reserves—Superintendent may make rules and regulations—Superintendent may withdraw certificate of approval after hearing—Conditions for cancellation of insurance policies and bonds.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(332) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to making rules and regulations governing the writing of insurance, the making of bonds, and the business of insuring or bonding risks, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 4.—EMPLOYERS' LIABILITY

§§ 44–401 to 44–403.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 44–404, 44–405.

§ 44–404. Suit to be brought within one year.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 44–405.

§ 44–405. Certain prior laws not affected.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 44–404.

TITLE 45.—REAL PROPERTY

Chapter 1.—CONVEYABLE ESTATES AND METHODS OF CONVEYANCE

§§ 45–102 to 45–104.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 45–823.

§ 45–106. Creation of term in excess of one year to be by deed or will.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–501.

Chapter 2.—INTERPRETATION OF INSTRUMENTS

§§ 45–203, 45–204.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 45–823.

Chapter 3.—FORMS—COVENANTS AND WARRANTIES

§ 45–301. Forms of instruments.

NOTES TO DECISIONS

Constitutionality

The claim that plaintiff homeowners were deprived of due process of law by District of Columbia statutes authorizing persons holding power of sale under mortgages, deeds of trust and other contracts conveying title to realty to foreclose and sell property by public auction without hearing for homeowner prior to sale was so insubstantial that three-judge court would not be convened in action for injunction restraining enforcement of statutes, since statutes provide that no such foreclosure sale may take place unless holder of note secured by mortgage is given notice 30 days in advance of sale and permit extrajudicial foreclosure only when instrument contains power of sale clause if owner defaults in payments. *J. H. Young et ano.* v. *P. S. Ridley et al.* (1970, 309 F. Supp. 1308).

§ 45–302. Deeds of corporations—Formal requisites—Acknowledgment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–501.

Chapter 4.—ACKNOWLEDGMENTS

§§ 45–401, 45–402.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 45–501.

§ 45–403. Acknowledgment out of District.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45–404, 45–501.

§ 45–404. Acknowledgment in foreign country.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–501.

§ 45–408. Certain defective acknowledgments and executions validated.

(a) All deeds and acknowledgments recorded in the land records of the District prior to January 1, 1969, of any of the following designated classes shall, in favor of parties in actual possession, claiming under and through such deeds, be deemed and held and are declared to be of the same effect and validity to pass the fee simple or other estate intended to be conveyed, and bar dower in the real estate therein mentioned, as if such deeds had in all respects been executed, acknowledged, proved, certified, and recorded according to law, namely:

First. All deeds executed and acknowledged by married women, their husbands having signed and sealed the same, for conveying any real estate, or interest therein, situated in the District;

Second. All acknowledgments of deeds by married women, whether they executed the deed or not, for the purpose of releasing their claims to dower in the lands described therein, situated in the District, in which acknowledgments the form prescribed by law was not followed;

Third. All deeds executed and acknowledged by an attorney in fact duly appointed for conveying real estate situated in the District;

Fourth. All deeds executed and acknowledged, or only acknowledged by such attorney in fact, for conveying real estate situated in the District, as to which the acknowledgment was made before officers different from those before whom proof of the power of attorney was made, and as to which the power of attorney was proved before only one justice of the peace;

Fifth. All deeds for the purpose of conveying land situated in the District, acknowledged out of the District, before a judge of a United States court, or before two aldermen of a city, or the chief magistrate of a city, or before a notary public or other officer;

Sixth. All deeds for the purpose of conveying land situated in the District, acknowledged by an attorney in fact, duly appointed, or by an officer of a corporation, duly authorized, who acknowledged the same to be his act and deed, instead of the act and deed of the grantor or of the corporation; and

Seventh. All deeds for the purpose of conveying land situated in the District (1) to which there was not annexed a legal certificate as to the official character of the officer or officers taking the acknowledgment; (2) which may have been recorded without the seal of the notary public before whom the acknowledgment was taken having been first attached, (3) in which the certificate of acknowledgment is not in the prescribed form, (4) which may have been acknowledged before a person who was not a proper officer, or (5) in which the official character of the officer taking the acknowledgment is not set out in the body of the certificate.

(b) This section shall not be construed to validate any deed with respect to which there was any misrepresentation, fraudulent act, or illegal provision in connection with its execution or acknowledgment. (R. S., D. C., § 459; Mar. 3, 1901, 31 Stat. 1270, ch 854, § 515; June 30, 1902, 32 Stat. 532, ch. 1329; Dec. 8, 1970, Pub. L. 91–536, 84 Stat. 1394.)

AMENDMENT

1970—Act Dec. 8, 1970, Pub. L. 91–536, amended section—

(1) by striking out "prior to the adoption of this code" and inserting in lieu thereof "prior to January 1, 1969,",

(2) by inserting "(1)" immediately after "in the District" in the paragraph of such section designated "Seventh" and by adding before the period at the end of such paragraph the following: ", (2) which may have been recorded without the seal of the notary public before whom the acknowledgment was taken having been first attached, (3) in which the certificate of acknowledgment is not in the prescribed form, (4) which may have been acknowledged before a person who was not a proper officer, or (5) in which the official character of the officer taking the acknowledgment is not set out in the body of the certificate", and

(3) by inserting "(a)" immediately after "Defective acknowledgments.—" and by adding at the end of the section a new subsection (b) to read as above set out.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45–409, 45–504.

§ 45–409. Acknowledgments by married women.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45–410, 45–504.

Chapter 6.—MORTGAGES AND DEEDS OF TRUST

Sec.
45–615. Terms of sale and notice to be given.

§ 45–603. Estate of mortgagee or trustee conveyed.

NOTES TO DECISIONS

Constitutionality

The claim that plaintiff homeowners were deprived of due process of law by District of Columbia statutes authorizing persons holding power of sale under mortgages, deeds of trust and other contracts conveying title to realty to foreclose and sell property by public auction without hearing for homeowner prior to sale was so insubstantial that three-judge court would not be convened in action for injunction restraining enforcement of statutes, since statutes provide that no such foreclosure sale may take place unless holder of note secured by mortgage is given notice 30 days in advance of sale and permit extrajudicial foreclosure only when instrument contains power of sale clause if owner defaults in payments. *J. H. Young et ano.* v. *P. S. Ridley et al.* (1970, 309 F. Supp. 1308).

§§ 45–605, 45–606.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 45–607.

§ 45–611. Appointment of trustee to sell in event of death of mortgagee or trustee.

In case of the death of a sole mortgagee or trustee, or the last survivor of several, if the debt secured by the mortgage or deed of trust shall not have been paid, the party entitled thereto may file a petition in the court having probate jurisdiction, setting forth under oath the execution of the mortgage or deed of trust, the death of the mortgagee or trustee, and the fact that the debt secured by the said mortgage or deed of trust remains unpaid, and such other fact as may be necessary to entitle the petitioner to the relief prayed, and praying for the appointment of a trustee to execute the trusts of the said mortgage or deed of trust. It shall not be necessary to make the heirs at law or devisees of the deceased mortgagee or trustee parties to such proceeding. The court may thereupon lay a rule upon the debtor or parties whose property is bound by said mortgage or deed of trust, unless they shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the 10th day, exclusive of Sundays and legal holidays, after the service of such rule, why the prayer of said petition should not be granted. If said party or parties can not be found in said District, service of said rule shall be by publication, according to the practice in equity in said court. If no cause be shown, notwithstanding the service of said rule, against the prayer of said petition, the court may determine in a summary way whether said debt remains unpaid, and if satisfied thereof the said court may, by decree, appoint a new trustee in the place of the deceased mortgagee or trustee, and vest in him all the title at law and in equity, and all the powers that had been conveyed to and vested in the deceased mortgagee or trustee. Nothing contained in this section shall prevent the appointment of a new trustee pursuant to section 45–614(b) and the execution of the trusts of said deed of trust by such new trustee. (Mar. 3, 1901, 31 Stat. 1272, ch. 854, § 534; June 30, 1902, 32 Stat. 532, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89–706, § 1(b); July 29, 1970, Pub. L. 91–358, title I, § 158(c)(1), 84 Stat. 576.)

AMENDMENT

1970—Section 158(c)(1) of Act July 29, 1970, Public Law 91–358 amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45–613, 45–614.

§ 45–614. Appointment of new trustee to sell in event of refusal or inability to act or removal of trustee from District, or for other good cause—Appointment of new trustee by agreement of parties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45–603, 45–611, 45–619.

§ 45–615. Terms of sale and notice to be given.

(a) If the length of notice and terms of sale are not prescribed by the mortgage or deed of trust, or be not left therein to the judgment or discretion of the mortgagee or trustee, any person interested in such sale may apply to the court, before such sale is advertised, to fix the terms of sale and determine what notice of sale shall be given.

(b) No foreclosure sale under a power of sale provision contained in any deed of trust, mortgage or other security instrument, may take place unless the holder of the note secured by such deed of trust, mortgage, or security instrument, or its agent, gives written notice, by certified mail return receipt requested, of said sale to the owner of the real property encumbered by said deed of trust, mortgage or security instrument at his last known address, with a copy of said notice being sent to the Commissioner of the District of Columbia, or his designated agent, at least 30 days in advance of the date of said sale. Said notice shall be in such format and contain such information as the District of Columbia Council shall by regulation prescribe. The 30-day period shall commence to run on the date of receipt of such notice by the Commissioner. The Commissioner or

his agent shall give written acknowledgment to the holder of said note, or its agent, on the day that he receives such notice, that such notice has been received, indicating therein the date of receipt of such notice. The notice required by this subsection (b) in regard to said mortgages and deeds of trust shall be in addition to the notice described by subsection (a) of this section. (Mar. 3, 1901, 31 Stat. 1274, ch. 854, § 539; June 30, 1902, 32 Stat. 532, ch. 1329; Oct. 12, 1968, Pub. L. 90–566, § 1, 82 Stat. 1002.)

AMENDMENT

1968—Act, Oct. 12, 1968, Pub. L. 90–566, amended the title of the section to read, "terms of sale and notice to be given"; inserted (a) at the beginning of the original section and added subsection (b) thereto.

NOTES TO DECISIONS

Constitutionality

The claim that plaintiff homeowners were deprived of due process of law by District of Columbia statutes authorizing persons holding power of sale under mortgages, deeds of trust and other contracts conveying title to realty to foreclose and sell property by public auction without hearing for homeowner prior to sale was so insubstantial that three-judge court would not be convened in action for injunction restraining enforcement of statutes, since statutes provide that no such foreclosure sale may take place unless holder of note secured by mortgage is given notice 30 days in advance of sale and permit extrajudicial foreclosure only when instrument contains power of sale clause if owner defaults in payments. *J. H. Young et ano.* v. *P. S. Ridley et al.* (1970, 309 F. Supp. 1308).

§ 45–619. Release after death of mortgagee or trustee.

In case of the death of a sole mortgagee or trustee or the last survivor of several, as aforesaid, if the debt secured by the mortgage or deed of trust shall have been paid, and it is desired by the party paying the same to obtain a deed of release, the said party may file a petition in the court having probate jurisdiction, setting forth, under oath, the execution of said mortgage or deed of trust, the death of the mortgagee or trustee, the payment of the debt, and any other fact necessary to entitle the petitioner to the relief prayed, and praying for the appointment of a trustee in the place of the deceased mortgagee or trustee to execute a deed of release of said mortgage or deed of trust. It shall not be necessary to make the heirs or devises of the deceased mortgagee or trustee a party to such proceeding. The court may thereupon lay a rule upon the creditor secured by said mortgage or deed of trust, unless he shall voluntarily appear and admit the allegations of the petition, to show cause, under oath, on or before the 10th day, exclusive of Sundays and legal holidays, after the service of said rule, why the prayer of the petition should not be granted. If said party can not be found in said District, service of said rule shall be by publication according to the practice in equity in said court. If no cause be shown, notwithstanding the service of said rule, against the prayer of the petition, the court may determine in a summary way whether said debt has been paid, and if satisfied thereof may, by decree, appoint a trustee in the place of the deceased mortgagee or trustee and invest in him the title, in law and in equity, that was in the deceased mortgagee or trustee, for the purpose of executing a deed of release as aforesaid. If matter of defense against the prayer for a release of said mortgage or deed of trust be set up in answer to said rule, the further proceedings shall be according to the practice in equity after answer filed. Nothing contained in this section shall prevent the appointment of a new trustee pursuant to section 45–614(b) and the execution of a deed of release by such new trustee. (Mar. 3, 1901, 31 Stat. 1273, ch. 854, § 537; June 30, 1902, 32 Stat. 532, ch. 1329; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; Nov. 2, 1966, 80 Stat. 1100, Pub. L. 89–706, § 1(c); July 29, 1970, Pub. L. 91–358, title I, § 158(c)(2), 84 Stat. 576.)

AMENDMENT

1970—Section 158(c)(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out "said United States District Court for the District of Columbia" and inserting in lieu thereof "the court having probate jurisdiction".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–614.

Chapter 7.—RECORDER OF DEEDS

SUBCHAPTER I.—APPOINTMENT AND FUNCTIONS OF RECORDER

§ 45–701. Appointment and duties.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS OF THE BOARD OF COMMISSIONERS

Section 501 of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"Status of certain agencies. (a) Functions now vested in any agency listed in subsection (b) of this section, or in any officer or body of or under such agency, shall remain so vested; but all functions of the Board of Commissioners of the District of Columbia and all functions of the President of that Board or of any other member of the Board, relating to the listed agency or its functions or to an officer or body thereof or to the functions of such officer or body shall be deemed to be transferred by part IV of this reorganization plan.

"(b) The following agencies of the Corporation are the agencies referred to in subsection (a) of this section:

"(1) Board of Education (including the public school system)

"(2) Board of Library Trustees (including the public libraries)

"(3) Recreation Board

"(4) Public Service Commission

"(5) Zoning Commission

"(6) Zoning Advisory Council

"(7) Board of Zoning Adjustment

"(8) Office of the Recorder of Deeds

"(9) Armory Board"

§ 45–702. Deputy recorder—Duties.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 45–703. Second deputy—His duties and powers.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 45–707. Certain records to be recopied—Expense.

That the Recorder of Deeds of the District of Columbia shall recopy such of the records in his office as may, in his judgment and that of a judge of the

Superior Court of the District of Columbia appointed for that purpose, need recopying in order to preserve the originals from destruction. The expense of such recopying may not in any fiscal year exceed $1,000 and such expense shall be certified by a judge of the Superior Court appointed for that purpose and audited by the General Accounting Office. (Feb. 26, 1907, 34 Stat. 994, ch. 1636; June 10, 1921, 42 Stat. 24, ch. 18, § 304; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(d), 84 Stat. 573.)

AMENDMENTS

1970—Section 155(d) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code.

1921—Act June 10, 1921, substituted "general accounting office" for "accounting officer of the Treasury."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

§ 45–708. Fees of recorder of deeds.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29–806, 45–714.

§ 45–714. Authority of Commissioners to increase or decrease fees.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SUBCHAPTER II.—RECORDATION TAX ON DEEDS

§ 45–721. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 45–722. Exemptions—Enumeration of deeds exempt from tax.

NOTES TO DECISIONS

Parent and trustees

District of Columbia deed recordation tax exemption which is provided for deeds between parent and child made without consideration also applies to a conveyance of real property made by parents to trustees under a trust they established for benefit of their children. *District of Columbia* v. *J. Orleans, Trustee, et al.* (1968, 406 F. 2d 957, 132 U.S. App. D.C. 139).

The fact that children might die prior to termination of trust involving a deed for benefit of the children and property would go to heirs of the child rather than donors' children would not prevent exemption from District of Columbia deed recordation tax in the absence of regulation or administrative policy formulating approach to definition and valuation that would be involved in taxation of contingent interests. *Id.*

§ 45–723. Imposition of tax—Rate—Returns—Liability for tax.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(333) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (d)(1) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 45–724. Absence of consideration—Basis for computation of tax.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–721.

§ 45–725. Investigation by Commissioners to determine correctness of returns—Production of books and records—Examination of witnesses—Service of summons — Compelling attendance — Punishment for disobedience.

The Commissioners, for the purpose of ascertaining the correctness of any return, statement, affidavit, or other document filed pursuant to the provision of this subchapter or pursuant to any reglations of the Commissioners promulgated hereunder, or for the purpose of ascertaining the correctness of any payment of the tax imposed by this subchapter, or the consideration for any deed upon which a tax is imposed, are authorized to examine any books, papers, records, or memorandums of any person bearing upon such matters and may summon any person to appear and produce books, records, papers, or memorandums pertaining thereto and to give testimony or answer interrogatories under oath respecting the same, and the Commissioners shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police Department. If any person having been personally summoned shall neglect or refuse to obey the summons as herein provided then, and in that event, the Commissioners may report that fact to the Superior Court for the District of Columbia, or one of the judges thereof, and said court or any judge thereof hereby is empowered to compel obedience to such summons to the same extent as witnesses may be compelled to obey the subpenas of that court. Any person in custody or control of any books, papers, records, or memorandums bearing upon the matters to which reference is herein made who shall refuse to permit the examination by the Commissioners or any person designated by them of any such books, papers, records, or memorandums, or who shall obstruct or hinder the Commissioners or any person designated by them in the examination of any books, papers, records, or memorandums, shall upon conviction thereof be subject to the penalties provided in this subchapter. (Mar. 2, 1962, 76 Stat. 12, Pub. L. 87–408, § 305; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(41), 84 Stat. 572.)

AMENDMENT

1970—Section 155(c)(41) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATE OF SECTION

See note to section 45–721.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

CROSS REFERENCE

For penalty provisions see §§ 45–729, 45–730(c), 45–740, 45–741.

§ 45–726. Recordation—Conditions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 45–728. Deficiencies in tax—Notice of determination—Protests—Hearings—Time for payment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–734.

§ 45–729. Penalties and interest—Waiver—Interest on deficiency assessments—Extension of time for payment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 45–730. Compromise and settlement—Written agreements for settlement of tax liability—Penalties for illegal acts in connection with compromise agreements—Prosecutions.

* * * * *

(c) Any person who, in connection with any compromise under this section or offer of such compromise or in connection with any written agreement under this section or offer to enter into any such agreement, conceals from any officer or employee of the District of Columbia any material fact relating to the tax imposed by this subchapter; destroys, mutilates, or falsifies any books, documents, or record; or makes under oath any false statements relating to the tax imposed by this subchapter shall, upon conviction thereof, be fined not more than $1,000 or imprisoned for not more than one year, or both. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia, in the name of the District of Columbia, on information by the Corporation Counsel of the District of Columbia or any of his assistants. (As amended July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (c) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 45–731. Compromise of penalties and adjustment of interest.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 45–732. Limitations—Time for making assessments—Extension of time by agreement—Suspension of running of period of limitations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 45–733. Administration of oaths.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 45–734. Appeal—Other remedies.

Any person aggrieved by any assessment of a deficiency in tax finally determined by the Commissioners under the provisions of section 45–728 may appeal to the Superior Court of the District of Columbia in the same manner and to the same extent as set forth in sections 47–2403, 47–2404, 47–2407 to 47–2411, as amended and as the same may hereinafter be amended. (Mar. 2, 1962, 76 Stat. 15, Pub. L. 87–408, § 314; July 29, 1970, Pub. L. 91–358, title I, §§ 156(b), 161(e)(1), 84 Stat. 573, 582.)

AMENDMENTS

1970—Section 156(b) of Act July 29, 1970, Public Law 91–358, amended section by striking out "District of Columbia Tax Court" and inserting in lieu thereof "Superior Court of the District of Columbia".

Section 161(e)(1) of Act July 29, 1970, Public Law 91–358 amended section by striking out subsection (b) and striking subsection designation (a) preceding the first paragraph.

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

§ 45–736. Stamps and other devices for collection of tax.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(334) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 45–737. Promulgation of rules and regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(335) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 45–738. Abatement.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 45–739. Elimination of fractional stamps or devices.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 45–740. General criminal penalty—Prosecutions by Corporation Counsel.

Whoever violates any provision of this subchapter for which no specific penalty is provided, or any of the rules and regulations promulgated under the authority of this subchapter, shall be subject to a fine of not more than $1,000, or to imprisonment of not more than one year, or to both such fine and imprisonment. Prosecutions for violations of this subchapter shall be on information filed in the Superior Court of the District of Columbia in the name of the District of Columbia by the Corporation Counsel or any of his assistants. (Mar. 2, 1962, 76 Stat. 16, Pub. L. 87–408, § 320; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, §§ 155(a), 161(e)(2), title I, 84 Stat. 570, 582.)

AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

Section 161(e)(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out ", except for such violations as are felonies, and prosecution for such violations as are felonies shall be by the United States attorney in and for the District of Columbia, or any of his assistants".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

Chapter 8.—ESTATES IN LAND

Sec.
45–816. Tenancies in common, tenancies by the entireties, and joint tenancies.

§ 45–805. Estates pur autre vie.

NOTES TO DECISIONS

Prior death of beneficiary

Under statute providing that estate for life of third person shall be deemed freehold only during life of grantee or devisee, but after his death shall be deemed chattel real and be part of his personal estate, where testator's nephew was given one-third of income from trust during life of testator's brother and brother was given two-thirds of income during his life, and will provided for termination of trust upon death of brother with distribution to nephew or his children, nephew's death before death of brother did not entitle brother to receive nephew's interest. *H. J. Bobys et ano.* v. *A. Bobys et al.* (1968, 284 F. Supp. 321).

Under statute providing that estate for life of third person shall be deemed freehold only during life of devisee but after his death shall be deemed chattel real and be part of his personal estate, where testator's nephew was given one-third of income from trust during life of testator's brother and will provided that, in event of nephew's predeceasing brother, corpus, after deduction of specific legacy, was to be paid to nephew's children, fact that nephew predeceased brother did not entitle nephew's children to acceleration of provision made as to them. *Id.*

Under statute providing that estate for life of third person shall be deemed freehold only during life of grantee or devisee but after his death shall be deemed chattel real and be part of his personal estate, interest of testator's nephew in one-third of income of trust during life of testator's brother was not extinguished at time of death of nephew who predeceased testator's brother, and such income would be paid to personal representatives of nephew's estate during life of testator's brother. *Id.*

§ 45–816. Tenancies in common, tenancies by the entireties, and joint tenancies.

Every estate granted or devised to two or more persons in their own right, including estates granted or devised to husband and wife, shall be a tenancy in common, unless expressly declared to be a joint tenancy; but every estate vested in executors or trustees, as such, shall be a joint tenancy, unless otherwise expressed. An estate in joint tenancy or tenancy by the entireties may be created by a conveyance in which one or more of the grantors in the conveyance is also one of the grantees. (Mar. 3, 1901, 31 Stat. 1352, ch. 854, § 1031; June 30, 1902, 32 Stat. 538, ch. 1329; Dec. 7, 1970, Pub. L. 91–530, § 1, 84 Stat. 1390.)

AMENDMENTS

1970—Section 1 of act Dec. 7, 1970, Pub. L. 91–530 amended this section (1) by adding at the end thereof the following: "An estate in joint tenancy or tenancy by the entireties may be created by a conveyance in which one or more of the grantors in the conveyance is also one of the grantees.", and (2) by striking out "and joint tenancies" in the side heading of the section and inserting in lieu thereof the following: ", tenancies by the entireties, and joint tenancies".

1902—Act June 30, 1902, added "unless otherwise expressed."

NOTES TO DECISIONS

Evidence—Sufficiency

Evidence, in a suit by the administratrix of the decedent to recover an automobile which was registered in the joint names of decedent and decedent's landlady and which had been purchased by the decedent from a bank account which was in the joint names of decedent and decedent's landlady, that decedent gave his interest in automobile to landlady prior to decedent's death was sufficient for jury. *E. L. Prather* v. *J. B. Hill* (D.C. App. 1969, 250 A. 2d 690).

§ 45–820. Estates by sufferance.

NOTES TO DECISIONS

Grounds for eviction

In this case, the court held that where landlord gives tenants, who had verbally leased property by the month, statutory 30 days' notice to vacate, the landlord is entitled to judgment of possession, notwithstanding that reason for notice may have been tenants' refusal to enter into written lease containing waiver of right to statutory notice to quit in event of certain breaches. *V. Wilson et al.* v. *J. R. Pinkett, Inc.* (D.C. App. 1970, 265 A. 2d 778).

Renewal of lease

In this case, the court held that since the tenant remained in possession and paid increased rent required by option for additional term after initial term had expired, the tenant affirmatively indicated his intent to exercise the option and did not hold over only as a tenant by sufferance. *P. J. Harris* v. *S. T. Gindes* (D.C. App. 1970, 265 A. 2d 598).

§ 45–821. Estates from month to month or from quarter to quarter.

NOTES TO DECISIONS

Grounds for eviction

In this case, the court held that where landlord gives tenants, who had verbally leased property by the month, statutory 30 days' notice to vacate, the landlord is entitled to judgment of possession, notwithstanding that reason for notice may have been tenants' refusal to enter into written lease containing waiver of right to statutory notice to quit in event of certain breaches. *V. Wilson et al.* v. *J. R. Pinkett, Inc.* (D.C. App. 1970, 265 A. 2d 778).

§ 45–822. Estates at will—When terminated.

NOTES TO DECISIONS

Status of person in possession of foreclosed property

Where real property is sold under foreclosure of a deed of trust, grantor of deed of trust, or anyone in possession claiming under him, becomes tenant at will of purchaser at foreclosure and is entitled to 30 days' notice to quit. *T. G. Thompson* v. *S. Mazo* (D.C. App. 1968, 245 A. 2d 122).

Chapter 9.—LANDLORD AND TENANT

§ 45–902. Notices to quit—Month to month.

NOTES TO DECISIONS

Grounds for eviction

It was the intent of Congress, which directed enactment of District of Columbia housing code, that, while landlord might evict for any legal reason or for no reason at all, he was not free to evict tenant in retaliation for tenant's report of housing code violations to the authorities. *Y. C. Edwards* v. *N. Habib* (1968, 397 F. 2d 687, 130 U.S. App. D.C. 126; cert. denied 89 S. Ct. 618, 393 U.S. 1016, 21 L. Ed. 2d 560).

Landlord's motivation for termination of tenancy

Tenant's constitutional rights to freedom of speech and to petition for redress of grievances were not violated by landlord's eviction of tenant through court action, notwithstanding fact that landlord may have been motivated to evict in retaliation for tenant's justified complaints to housing authority about condition of premises. *Y. C. Edwards* v. *N. Habib* (D.C. App. 1967, 227 A. 2d 388, rev'd and remanded 397 F. 2d 687).

Thirty days' notice to quit given by landlord to month-to-month tenant was sufficient to terminate tenancy under statute, notwithstanding fact that landlord may have been motivated to give notice in retaliation for tenant's justified complaints to housing authority about condition of premises. *Id.*

Violations of regulations

In this case, the court held that the fact that there had been Housing Code violations, under process of being corrected, in tenant's apartment at time she executed lease does not render lease invalid. *C. M. Watson* v. *S. Kotler* (D.C. App. 1970, 264 A. 2d 141).

In this case the jury found that substantial violations of the housing regulations existed on premises at time lease was signed, and that such violations were sufficient to render premises unsafe and unsanitary, and landlord knew or should have known of such violations, and the court held lease was void and unenforceable, though landlord had not received official notice of existence of violations from city housing inspectors. *Diamond Housing Corp.* v. *L. Robinson* (D.C. App. 1969, 257 A. 2d 492).

§ 45–903. Tenancy at will—Notice for termination.

NOTES TO DECISIONS

Status of person in possession of foreclosed property

Where real property is sold under foreclosure of a deed of trust, grantor of deed of trust, or anyone in possession claiming under him, becomes tenant at will of purchaser at foreclosure and is entitled to 30 days' notice to quit. *T. G. Thompson* v. *S. Mazo* (D.C. App. 1968, 245 A. 2d 122).

§ 45–904. Tenancy by sufferance—When terminated.

NOTES TO DECISIONS

Notice generally

In a case where a tenant at sufferance vacated premises on August 27 without giving landlord 30-day notice of his intention to quit, tenant was liable for rent only for 30 days subsequent to vacating. *A. Willis* v. *Retail Adjustment Bureau, Inc., etc.* (D.C. App. 1969, 248 A. 2d 823).

A tenant at sufferance who vacated without the giving required 30-day notice is liable for rent for 30 days during which notice would have run. *Id.*

Retaliatory defense

In this case a tenant, who had been successful in having lease declared void and unenforceable in prior action because property was unsafe and uninhabitable and who was being evicted after expiration of 30 days' notice because landlord wished to withdraw property from rental market, would not be permitted to raise defense that landlord's action for recovery of possession was retaliatory. *L. Robinson* v. *Diamond Housing Corporation* (D.C. App. 1970, 267 A. 2d 833).

Sufficiency of record on appeal

In a case where the landlord's assignee did not file a brief in the tenant's appeal from judgment for unpaid rent, there was no statement of proceedings and evidence in the record and trial court did not certify that the tenant's recital of the facts was correct, reviewing court would remand case for trial on tenant's claim that landlord's assignee was estopped to assert a right to rent because of oral waiver by landlord-assignor of 30-day notice of intention to quit. *A. Willis* v. *Retail Adjustment Bureau, Inc., etc.* (D.C. App. 1969, 248 A. 2d 823).

Summary judgment

In this case the court held that since the landlord of housing, which had been determined to be unsafe and uninhabitable in violation of housing regulations, served a 30 days' notice upon tenant at sufferance and then brought action to recover possession upon her failure to quit so that he could withdraw property from rental market, it was unreasonable to permit the tenant to remain in unsafe and uninhabitable housing, and in absence of opposing affidavits by the tenant, granting of landlord's motion for summary judgment was proper. *L. Robinson* v. *Diamond Housing Corporation* (D.C. App. 1970, 267 A. 2d 833).

Use and occupation

Although a former tenant is entitled to restitution of rent paid under a void lease, the landlord is entitled to the reasonable value of the premises in the condition existing when occupied by the tenant and is entitled to setoff. *William J. Davis, Inc., et ano.* v. *C. Slade* (D.C. App. 1970, 271 A. 2d 412).

§ 45–905. Notice not to be recalled.

NOTES TO DECISIONS

Grounds for eviction

In this case, the court held that where landlord gives tenants, who had verbally leased property by the month, statutory 30 days' notice to vacate, the landlord is entitled to judgment of possession, notwithstanding that reason for notice may have been tenants' refusal to enter into written lease containing waiver of right to statutory notice to quit in event of certain breaches. *V. Wilson et al.* v. *J. R. Pinkett, Inc.* (D.C. App. 1970, 265 A. 2d 778).

§ 45–908. Agreement as to notice.

NOTES TO DECISIONS

Grounds for eviction

In this case, the court held that where landlord gives tenants, who had verbally leased property by the month, statutory 30 days' notice to vacate, the landlord is entitled to judgment of possession, notwithstanding that reason for notice may have been tenants' refusal to enter into written lease containing waiver of right to statutory notice to quit in event of certain breaches. *V. Wilson et al.* v. *J. R. Pinkett, Inc.* (D.C. App. 1970, 265 A. 2d 778).

Violations of regulations

In this case, the court held that the fact that there had been Housing Code violations, under process of being corrected, in tenant's apartment at time she executed lease does not render lease invalid. *C. M. Watson* v. *S. Kotler* (D.C. App. 1970, 264 A. 2d 141).

In this case the jury found that substantial violations of the housing regulations existed on premises at time lease was signed, and that such violations were sufficient to render premises unsafe and unsanitary, and landlord

knew or should have known of such violations, and the court held lease was void and unenforceable, though landlord had not received official notice of existence of violations from city housing inspectors. *Diamond Housing Corp.* v. *L. Robinson* (D.C. App. 1969, 257 A. 2d 492).

§ 45–909. Recovery of real and personal property leased together.

Whenever real and personal property are leased together, as, for example, a house with furniture contained therein, the landlord, either in an action of ejectment or in the summary proceeding for possession, in the Superior Court of the District of Columbia, may have a judgment for recovery of the personalty as well as the realty. (Mar. 3, 1901, 31 Stat. 1384, ch. 854, § 1235; Feb. 17, 1909, 35 Stat. 623, ch. 134; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 167(1), 84 Stat. 588.)

AMENDMENT

1970—Section 167(1) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 45–910. Ejectment or summary proceedings.

Whenever a lease for any definite term shall expire, or any tenancy shall be terminated by notice as aforesaid, and the tenant shall fail or refuse to surrender possession of the leased premises, the landlord may bring an action of ejectment to recover possession in the Superior Court of the District of Columbia. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1225; Feb. 17, 1909, 35 Stat. 623, ch. 134, June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, §§ 155(c)(1)(J), 167(2), title I, 84 Stat. 570, 588.)

AMENDMENTS

1970—Section 155(c)(1)(J) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

Section 167(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out "or the landlord may bring an action to recover possession before a justice of the peace, as provided in chapter one, subchapter one, aforesaid".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

NOTES TO DECISIONS

Grounds for eviction

It was the intent of Congress, which directed enactment of the District of Columbia housing code, that, while landlord might evict for any legal reason or for no reason at all, he was not free to evict tenant in retaliation for tenant's report of housing code violations to the authorities. *Y. C. Edwards* v. *N. Habib* (1968, 397 F. 2d 687, 130 U.S. App. D.C. 126; cert. denied 89 S. Ct. 618, 393 U.S. 1016, 21 L. Ed. 2d 560).

Preliminary injunction

In this case where numerous other remedies were available to landlord, grant of preliminary injunction was improper prohibiting tenants, who claimed that buildings were in violation of housing code, from paying rent to third party and which directed rentals deposited to be paid into court for delivery to landlord even though landlord was in financial difficulty, was in default on trust payments, and was without other available funds. *R. Dorfmann, et al., etc.* v. *R. B. Boozer, et al.* (1969, 414 F. 2d 1168, 134 U.S. App. D.C. 272).

§ 45–911. Arrears of rent and double rent.

In either case the landlord may join with his claim for recovery of the possession of the leased premises a claim for all arrears of rent accrued to the termination of the tenancy, and, when the tenant has given the notice, for double rent from the termination of the tenancy to the verdict, or judgment, if the trial be by the court and for damages for waste: *Provided*, That in such action before the Superior Court of the District of Columbia the amount so claimed shall be within its jurisdiction. If judgment for possession be rendered in favor of the plaintiff, he shall be entitled, at the same time, to a judgment for said arrears of rent, and for said double rent, as the case may be, to the date of the verdict or judgment as aforesaid, and for damages for waste. (Mar. 3, 1901, 31 Stat. 1382, ch. 854, § 1226; June 30, 1902, 32 Stat. 542, ch. 1329; Feb. 17, 1909, 35 Stat. 623, ch. 134; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

NOTES TO DECISIONS

Preliminary injunction

In this case where numerous other remedies were available to landlord, grant of preliminary injunction was improper prohibiting tenants, who claimed that buildings were in violation of housing code, from paying rent to third party and which directed rentals deposited to be paid into court for delivery to landlord even though landlord was in financial difficulty, was in default on trust payments, and was without other available funds. *R. Dorfmann, et al., etc.* v. *R. B. Boozer, et al.* (1969, 414 F. 2d 1168, 134 U.S. App. D.C. 272).

§ 45–912. Consolidation of actions.

If actions be brought separately for arrears of rent and for the possession, they may be afterwards consolidated and one judgment rendered in them for the possession and also for the rent. (Mar. 3, 1901, 31 Stat. 1383, ch. 854, § 1227; Feb. 17, 1909, 35 Stat. 623, ch. 134; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 157(g), 84 Stat. 575.)

AMENDMENT

1970—Section 157(g) of Act July 29, 1970, Public Law 91–358 amended section by striking out ", either in said United States District Court for the District of Columbia or before a justice of the peace".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 45–914. Repealed. July 29, 1970, Pub. L. 91–358, § 167(3) title I, 84 Stat. 588.

Section being section 1228, of the Act of Mar. 3, 1901, 31 Stat. 1383, ch. 854, contained provisions dealing with procedure in the event the defendant pleaded title in himself.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

§ 45–915. Landlord's lien for rent.

NOTES TO DECISIONS

Preliminary injunction

In this case where numerous other remedies were available to landlord, grant of preliminary injunction was improper prohibiting tenants, who claimed that buildings were in violation of housing code, from paying rent to third party and which directed rentals desposited to be paid into court for delivery to landlord even though landlord was in financial difficulty, was in default on trust payments, and was without other available funds. *R. Dorfmann, et al., etc.* v. *R. B. Boozer, et al.* (1969, 414 F. 2d 1168, 134 U.S. App. D.C. 272).

§ 45–916. Lien—How enforced.

NOTES TO DECISIONS

Preliminary injunction

In this case where numerous other remedies were available to landlord, grant of preliminary injunction was improper prohibiting tenants, who claimed that buildings were in violation of housing code, from paying rent to third party and which directed rentals deposited to be paid into court for delivery to landlord even though landlord was in financial difficulty, was in default on trust payments, and was without other available funds. *R. Dorfmann, et al., etc.* v. *R. B. Boozer, et al.* (1969, 414 F. 2d 1168, 134 U.S. App. D.C. 272).

Chapter 10.—POWERS

§§ 45–1005 to 45–1007.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 45–1008.

Chapter 14.—REAL ESTATE AND BUSINESS BROKERS' LICENSES

§ 45–1401. Acting as broker or salesman without license unlawful.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–1409.

NOTES TO DECISIONS

Construction

Action by assignee of broker to collect unpaid rent from lessee, who had vacated premises and had terminated its relationship with broker, falls within statute making it unlawful for any corporation to act as a real estate broker without first securing a license and prohibiting any corporation engaged in real estate activities from bringing a suit based on such activities unless it has acquired a real estate license, and unlicensed assignee, an independent collection agency working on a collection fee basis, is precluded from bringing action for unpaid rent. *R. Harrison* v. *J. H. Marshall & Associates, Inc.* (D.C. App. 1970, 271 A. 2d 404.)

Permitting others to use broker's license

It was proper to revoke a real estate broker's license who agreed to lend use of her license to a company for $50 per month plus $25 for each real estate transaction consummated, and who seldom visited company office and exercised no supervision over salemen, one of whom testified that broker knew the salesmen were using her broker's license in arranging and negotiating mortgage loans. *C. T. Cardoza* v. *Real Estate Commission etc.* (D.C. App. 1969, 248 A. 2d 815).

A real estate broker's ignorance, who had agreed to lend use of license to company, as to the unlawful conduct of a salesman was no excuse since she in effect blindfolded herself and failed to inquire about significant happenings in the office. *Id.*

Property outside the District

A person employed as a real estate salesman of the officer-broker of mortgage company which was a District of Columbia corporation and who contracted in the District of Columbia with a salesman for the same company to negotiate a loan on Virginia real estate owned by a District of Columbia resident and who paid such person a commission was acting as a District of Columbia broker without a license in violation of statute. *J. W. Reiss* v. *Real Estate Commission etc.* (D.C. App. 1969, 248 A. 2d 814).

§ 45–1402. Definitions—Exceptions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–1409.

NOTES TO DECISIONS

Construction

Action by assignee of broker to collect unpaid rent from lessee, who had vacated premises and had terminated its relationship with broker, falls within statute making it unlawful for any corporation to act as a real estate broker without first securing a license and prohibiting any corporation engaged in real estate activities from bringing a suit based on such activities unless it has acquired a real estate license, and unlicensed assignee, an independent collection agency working on a collection fee basis, is precluded from bringing action for unpaid rent. *R. Harrison* v. *J. H. Marshall & Associates, Inc.* (D.C. App. 1970, 271 A. 2d 404).

Property outside the District

A person employed as a real estate salesman of the officer-broker of mortgage company which was a District of Columbia corporation, and who contracted in the District of Columbia with a salesman for the same company to negotiate a loan on Virginia real estate owned by a District of Columbia resident and who paid such person a commission was acting as a District of Columbia broker without a license in violation of statute. *J. W. Reiss* v. *Real Estate Commission etc.* (D.C. App. 1969, 248 A. 2d 814).

§ 45–1403. Real Estate Commission created—Membership—Seal—Records—Compensation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(336) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in the particulars described in par. 336, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–1409.

§ 45–1404. Qualifications for license.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–1409.

NOTES TO DECISIONS

Trustworthiness and competency

Evidence in hearing on application for real estate broker's license was sufficient to raise doubt as to trustworthiness and competency of petitioner to transact business of broker and to justify denial of application. *C. O. Holloman* v. *Real Estate Commission etc.* (D.C. App. 1968, 241 A. 2d 595).

§ 45–1405. Application for license—Requirements—Location of business—Members—Individual broker's and real-estate salesman's license—Bond—Form, conditions.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(337) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to requiring proof of the honesty,

truthfulness, and integrity of the applicant, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45–1408 to 45–1410.

NOTES TO DECISIONS

Failure to file new bond

Evidence supported finding that real estate broker, after cancellation of bond, failed to file new bond within time period specified by real estate commission; accordingly, since broker had been notified that unless new bond was filed within period license would terminate, termination was not illegal. *Carl O. Holloman* v. *Real Estate Commission etc.* (D.C. App. 1968, 241 A. 2d 595).

§ 45–1406. Procedure when license refused.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–1409.

§ 45–1407. Details relating to license.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–1409.

NOTES TO DECISIONS

Construction

Action by assignee of broker to collect unpaid rent from lessee, who had vacated premises and had terminated its relationship with broker, falls within statute making it unlawful for any corporation to act as a real estate broker without first securing a license and prohibiting any corporation engaged in real estate activities from bringing a suit based on such activities unless it has acquired a real estate license, and unlicensed assignee, an independent collection agency working on a collection fee basis, is precluded from bringing action for unpaid rent. *R. Harrison* v. *J. H. Marshall & Associates, Inc.* (D.C. App. 1970, 271 A. 2d 404).

§ 45–1408. Suspension or revocation of license—Causes enumerated.

NOTES TO DECISIONS

Construction

This section providing inter alia, that Real Estate Commission has power to suspend license where licensee demonstrates such unworthiness or incompetency to act as a real estate broker as to endanger the interest of the public is not void for vagueness. *E. L. Greene* v. *Real Estate Commission of the Dist. of Col.* (D.C. App. 1970, 263 A. 2d 634).

Issues not raised in lower court

Where defendant in real estate broker's action to recover commission did not raise issue in trial court of legality of oral listing of property with broker for sale, the Court of Appeals would not consider the issue. *H. P. Miller* v. *J. Avirom* (1967, 384 F. 2d 319, 127 U.S. App. D.C. 367).

Defendant's secondary reliance on statute of frauds in real estate broker's action to recover commission did not encompass issue of legality of oral listing with broker of property for sale and Court of Appeals could not consider the issue on appeal. *Id.*

Permitting others to use broker's license

It was proper to revoke a real estate broker's license who agreed to lend use of her license to a company for $50 per month plus $25 for each real estate transaction consummated, and who seldom visited company office and exercised no supervision over salesmen, one of whom testified that broker knew the salesmen were using her broker's license in arranging and negotiating mortgage loans. *C. T. Cardoza* v. *Real Estate Commission etc.* (D.C. App. 1969, 248 A. 2d 815).

A real estate broker's ignorance, who had agreed to lend use of license to company, as to the unlawful conduct of a salesman was no excuse since she in effect blindfolded herself and failed to inquire about significant happenings in the office. *Id.*

§ 45–1409. Hearing before suspension—Court review—Appeal.

The Commission shall, before denying an application for license, or before suspending or revoking any license, set the matter down for a public hearing, and at least ten days prior to the date set for the hearing it shall notify the applicant or licensee in writing of any charges made and shall afford said applicant or licensee an opportunity to be heard in person or by counsel in reference thereto. Such written notice may be served by delivery of same personally to the applicant or licensee or by mailing same by registered mail or by certified mail to the last-known business address of such applicant or licensee. If said applicant or licensee be a salesman the Commission shall also notify the broker employing him, or whose employ he is about to enter, by mailing notice by registered mail or by certified mail to the broker's last-known address. The hearing on such charges shall be at such time and place as the Commission shall prescribe. The Commission shall have the power to issue subpenas or take testimony of any person by deposition in the same manner as prescribed by law in judicial procedure in the Superior Court of the District of Columbia in civil cases. It shall also have the power to require the production of books, records, papers, and documents by subpena or otherwise. Any party to any hearing before the Commission shall have the right to the attendance of witnesses in his behalf at such hearing upon making request therefor to the Commission and designating the person or persons sought to be subpenaed. If the Commission shall determine that any applicant is not qualified to receive a license, a license shall not be granted to said applicant, and if the Commission shall determine that any licensee is guilty of a violation of any of the provisions of §§ 45–1401 to 45–1418 this chapter, his or its licenses shall be suspended or revoked.

A final decision or determination of the Commission denying, suspending, or revoking a license may be reviewed in the District of Columba Court of Appeals in the manner provided by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510).

Any party to the proceedings desiring it shall be furnished with a copy of such stenographic notes, upon the payment to the Commission of such reasonable fee as it shall, by general rule or regulation, prescribe. (Aug. 25, 1937, 50 Stat. 794, ch. 760, § 9; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; June 11, 1960, 74 Stat. 203, Pub. L. 86–507 § 1(50); Dec. 23, 1963, 77 Stat. 617, Pub. L. 88–241, § 9; July 29, 1970, Pub. L. 91–358, title I, §§ 155(c)(42)(A), 164(o), 84 Stat. 572, 586.)

AMENDMENTS

1970—Section 155(c)(42)(A) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

Section 164(o) of Act July 29, 1970, Public Law 91–358 amended the second paragraph of section by striking out "sections 11–742, 17–303, 17–305, 17–305(b), 17–306 and 17–307 of the District of Columbia Code" and inserting in lieu thereof "the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510)".

1963—Sec. 9 of act Dec. 23, 1963, amended the section by striking out the 9th and 10th sentences in the first paragraph and the entire second paragraph and inserted in lieu thereof a new paragraph.

1960—Act June 11, 1960, inserted words "or by certified mail" following "registered mail" in two instances.

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

EFFECTIVE DATE OF 1963 AMENDMENT

Amendment of section by act Dec. 23, 1963, was made effective on Jan. 1, 1964. See note preceding ch. 1, Title 11.

CROSS REFERENCES

Certified mail receipts as prima-facie evidence of delivery, see § 14–506.

Jurisdiction of the District of Columbia Court of Appeals to review final decision of Real Estate Commission, see § 11–722.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45–1406, 45–1409.

NOTES TO DECISIONS

Evidence—sufficiency

In an appeal by a real estate broker from a decision of the Real Estate Commission in suspending his license for 15 days, the court held the Real Estate Commission could properly conclude upon its findings that broker's careless and callous failure to inform his client of reasons for difficulty in repaying deposit, of which he was a trustee, constituted such incompetence and untrustworthy conduct as to endanger the public interest. *E. L. Greene* v. *Real Estate Commission of the Dist. of Col.* (D.C. App. 1970, 263 A. 2d 634).

§ 45–1410. Provisions applicable to nonresident brokers and salesmen.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–1409.

§ 45–1411. Power to obtain evidence.

Each member of the Commission and its duly authorized representatives may administer oaths to witnesses.

In case of the refusal of any person to comply with any subpena issued hereunder or to testify to any matter regarding which he may lawfully be interrogated, the Superior Court of the District of Columbia, or any judge thereof, on application of any member of the Commission, shall issue an order requiring such person to comply with such subpena and to testify or either, and any failure to obey such order of the court may be punished by the court as a contempt thereof. (Aug. 25, 1937, 50 Stat. 796, ch. 760, § 11; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107; ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(42)(B), 84 Stat. 572.)

AMENDMENT

1970—Section 155(c)(42)(B) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–1409.

§§ 45–1412 to 45–1415.

SECTION REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 45–1409.

§ 45–1416. Penalties—Prosecutions.

Any person or corporation violating any provision of this chapter shall upon conviction thereof, if a person, be punished by a fine of not more than $500, or by imprisonment for a term not to exceed six months, or by both such fine and imprisonment, in the discretion of the court; and, if a corporation, be punished by a fine of not more than $1,000. Any officer, director, employee, or agent of a corporation, or member, employee, or agent of a firm, partnership, copartnership, or association, who shall personally participate in or be accessory to any violation of this chapter by such firm, partnership, copartnership, association, or corporation, shall be subject to the penalties herein prescribed for individuals.

This chapter shall not be construed to release any person, partnership, association, or corporation from civil liability or criminal prosecution under the laws applying to the District of Columbia.

All prosecutions for violation of this chapter shall be begun in the Superior Court of the District of Columbia in the name of the District of Columbia and under the direction and charge of the corporation counsel of the District of Columbia. The corporation counsel of the District of Columbia and his assistants shall also be counsel for the Commission in all suits to which it may be a party, and shall advise the Commission and at its request attend any and all hearings which it may hold in the performance of its duties hereunder. (Aug. 25, 1937, 50 Stat. 797, ch. 760, § 16; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45–1406, 45–1409.

§§ 45–1417, 45–1418.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 45–1409.

Chapter 16.—RENT CONTROL

§ 45–1603. General and special adjustments.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–1602.

§ 45–1604. Petition for adjustment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45–1602, 45–1608, 45–1609.

§ 45–1607. Obtaining information.

(a) The Administrator may make such studies and investigations, and obtain or require the furnishing of such information under oath or affirmation or otherwise, as he deems necessary or proper to assist him in prescribing any regulation or order under this chapter, or in the administration and enforcement of this chapter, and regulations and

orders thereunder. For such purposes the Administrator may administer oaths and affirmations; may require, by subpena or otherwise, the attendance and testimony of witnesses and the production of documents at any designated place; may require persons to permit the inspection and copying of documents, and the inspection of housing accommodations; and may, by regulation or order, require the making and keeping of records and other documents. No person shall be excused from complying with any requirement under this section because of his privilege against self-incrimination, but the immunity provisions of the Compulsory Testimony Act of February 11, 1893 (U.S.C., 1934 edition, title 49, sec. 46), shall apply with respect to any individual who specifically claims such privilege. In the event of contumacy or refusal to obey any such subpena or requirement under this section, the Administrator may make application to the Superior Court of the District of Columbia for an order requiring obedience thereto. Thereupon the court, with or without notice and hearing, as it in its discretion may decide, shall make such order as is proper and may punish as a contempt any failure to comply with such order.

(b) The Administrator shall have authority to promulgate, issue, amend, or rescind rules and regulations, subject to approval by the Commissioners of the District of Columbia, and to issue such orders as may be deemed necessary or proper to carry out the purposes and provisions of this chapter or to prevent the circumvention or evasion thereof. (Dec. 2, 1941, 55 Stat. 792, ch 553, § 7; Sept. 26, 1942, 56 Stat. 759, ch. 564, § 2; June 30, 1951, 65 Stat. 103, ch. 192, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(43)(A), 84 Stat. 572.)

AMENDMENT

1970—Section 155(c)(43)(A) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§§ 45–1608, 45–1609.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 45–1604.

§ 45–1610. Enforcement—Penalties.

(a) If any landlord receives rent or refuses to render services in violation of any provision of this chapter, or of any regulation or order thereunder prescribing a rent ceiling or service standard, the tenant paying such rent or entitled to such service, or the Administrator on behalf of such tenant, may bring suit to rescind the lease or rental agreement, or, in case of violation of a maximum-rent ceiling, an action for double the amount by which the rent paid exceeded the applicable rent ceiling and, in case of violation of a minimum-service standard, an action for double the value of the services refused in violation of the applicable minimum-service standard or for $50, whichever is greater in either case, plus reasonable attorneys' fees and costs as determined by the court. Any suit or action under this subsection may be brought in the Superior Court of the District of Columbia regardless of the amount involved, and the Superior Court of the District of Columbia is hereby given exclusive jurisdiction to hear and determine all such cases.

(b) No person shall be held liable for damages or penalties in any court on any grounds for or in respect of anything done or omitted to be done in good faith pursuant to any provision of this chapter or any regulation, order, or requirement thereunder, notwithstanding that subsequently such provision, regulation, order, or requirement may be modified, rescinded, or determined to be invalid. The Administrator may intervene in any suit or action wherein a party relies for ground of relief or defense upon this chapter or any regulation, order, or requirement thereunder. No costs shall be assessed against the Administrator in any proceedings had or taken in accordance with this chapter.

(c) Whenever in the judgment of the Administrator any person has engaged or is about to engage in any acts or practices which constitute or will constitute a violation of this chapter, or any regulation, order, or requirement thereunder, he may make application to the Superior Court of the District of Columbia for an order enforcing compliance with this chapter or such regulation, order, or requirement, and upon a proper showing a permanent or temporary injunction, restraining order, or other order, shall be granted without bond. (Dec. 2, 1941, 55 Stat. 794, ch. 553, § 10; Apr. 19, 1949, 63 Stat. 49, ch. 73, § 6; June 30, 1951, 65 Stat. 105, ch. 192, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155 (a), (c)(48)(B), 84 Stat. 570, 572.)

AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (a) by striking out "District of Columbia Court of General Sessions," and inserting in lieu thereof "Superior Court of the District of Columbia".

Section 155(c)(43)(B) of Act July 29, 1970, Public Law 91–358, amended subsec. (c) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 45–1605.

TITLE 46.—SOCIAL SECURITY

Chapter 3.—UNEMPLOYMENT COMPENSATION

§ 46–301. Definitions.

* * * * *

(b) (5) * * *

(T) service performed after April 1, 1962, in the employ of a public international organization designated by the President as entitled to enjoy the privileges, exemptions, and immunities provided under the International Organizations Immunities Act (22 U.S.C. 288—288f–1).

* * * * *

(As amended Oct. 1, 1969, Pub. L. 91–80; § 1, 83 Stat. 130.)

AMENDMENTS

1969—Pub. L. 91–80, amended subsection (b)(5) by striking out the period at the end of clauses (P) and (R), inserting a semicolon at the end of each clause and adding clause (T) thereto, to follow clause (S).

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(338 to 341) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (c), (k), (n) and (o) in the particulars described in pars. 338 to 341, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46–303, 46–306 to 46–308.

NOTES TO DECISIONS

Construction

The District of Columbia Minimum Wage Act [§ 36–401 et seq.] was intended to cover wages and hours of individuals working in transportation field solely within the District of Columbia, but does not apply to bus drivers who were engaged in interstate commerce, spending on the average 37.6 percent of working time in the District. *K. C. Williams et al.* v. *W. M. A. Transit Company* (D.C. App. 1970, 268 A. 2d 261.)

The purpose of Congress in enacting 1962 amendment to District of Columbia Unemployment Compensation Act, was to deny exemption from the act to scientific, literary or educational entities but to continue exemption to those which had been organized and operated exclusively for religious or charitable purposes. *Greater Southeast Community Hospital Foundation Inc., etc.* v. *District Unemployment Compensation Board* (1969, 407 F. 2d 712, 132 U.S. App. D.C. 249).

Due process

Discriminatory classification of employees, created by Congress' legitimate interest in exempting charitable organizations from payment of unemployment taxes, by denying benefits to employees of exempt organizations, is reasonable and does not violate due process. *T. F. Von Stauffenberg* v. *District Unemployment Compensation Board* (D.C. App. 1970, 269 A. 2d 110).

Evaluation of exemption application

In a case where the hospital's application for exemption from the District of Columbia Unemployment Compensation Act had not been evaluated under criteria ascertainable on the record before the Court of Appeals, the Court of Appeals remanded case to district court to the end that it be returned to the compensation board for a re-evaluation of its determination in light of court's opinion. *Greater Southeast Community Hospital Foundation Inc., etc.* v. *District Unemployment Compensation Board* (1969, 407 F. 2d 712, 132 U.S. App. D.C. 249).

§ 46–302. District Unemployment Fund.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46–301, 46–314.

§ 46–303. Employer contributions.

* * * * *

(c) FUTURE RATES BASED ON BENEFIT EXPERIENCE.—

* * * * *

(10) At least one month prior to the final date upon which the first contributions for any calendar year or part thereof become due from any employer at a contribution rate determined under this subsection, the Board shall notify such employer of his rate of contributions and of the benefit charges upon which such rate was based. Such determination shall become conclusive and binding upon the employer unless, within thirty days after the mailing of notice thereof to his last-known address, or in the absence of mailing, within thirty days after the delivery of such notice, the employer files an application for review and a redetermination, setting forth his reasons therefor. Upon receipt of such application, the Board shall voluntarily adjust such matter or shall grant an opportunity for a fair hearing and promptly notify the employer thereof. All such hearings shall be held before a Contribution Rate Review Committee composed of three members who shall be employees of the Board and appointed by the Board. The findings and decision of this Committee shall not be subject to review by the District Auditor. No employer shall have standing, in any proceeding involving his rate of contributions or contribution liability, to contest the chargeability of his account of any benefits paid in accordance with a determination, redetermination, or decision pursuant to section 46–311, except on the ground that the services on the basis of which such benefits were found to be chargeable do not constitute services performed in employment for him and only in the event that he was not a party to such determination, redetermination, or decision or to any other proceedings under this chapter in which the character of such services was determined. The employer shall be promptly notified of the Board's denial or his application or of the Board's redetermination, both of which shall become final unless, within thirty days after the mailing of such notice thereof to his last-known address, or in the absence of mailing, within thirty days after the delivery of such notice, a petition for judicial review is filed in the Superior Court of the District of Columbia. In any proceedings under this subsection the findings of the Board as to the facts,

if supported by evidence and in the absence of fraud, shall be conclusive and the jurisdiction of said court shall be confined to questions of law. Such proceedings shall be given precedence over all other civil cases except cases arising under section 46–312 and under section 36–501.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, §§ 155(c)(44)(A), 163(j)(1), 84 Stat. 572, 583.)

AMENDMENTS

1970—Section 155(c)(44)(A) of Act July 29, 1970, Public Law 91–358, amended subsection (c)(10) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

Section 163(j)(1) of Act July 29, 1970, Public Law 91–358 amended subsection (c)(10) by striking out the last sentence thereof. See 1967 edition of the D.C. Code.

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46–304, 46–317.

NOTES TO DECISIONS

Notice to base period employers

Under section of Unemployment Compensation Act that claimant and other parties to proceedings shall be promptly notified of initial determination with respect to whether or not benefits may be payable, notice to all "base period employers" is required. *District Unemployment Compensation Board* v. *W. Hahn & Co., Inc.* (1968, 399 F. 2d 987, 130 U.S. App. D.C. 254).

Under section of Unemployment Compensation Act providing that if disqualification of claimant of benefits has been alleged or may exist benefits shall not be paid prior to expiration of period for appeal, there must be some opportunity to challenge claimant's eligibility before payments are made. *Id.*

§ 46–304. Method of paying employer contributions.

* * * * *

(e) If any employer liable to pay the contribution or tax imposed by section 46–303 neglects and refuses to pay the same after demand, the amount (including any interest) shall be a lien upon all of the property and rights to property, whether real or personal belonging to such person. Such lien shall not be valid as against any mortgagee, pledgee, purchaser, or judgment creditor until notice thereof has been filed by the Board with the Recorder of Deeds of the District of Columbia. The Board may cause a civil action to be filed in the Superior Court of the District of Columbia to enforce the aforesaid lien by sale of any property or rights to property, whether real or personal, of the delinquent employer affected by said lien. All persons having liens upon or claiming any interst in the property or rights to property sought to be sold, as aforesaid, shall be made parties to the proceedings and brought into court. The court shall proceed to adjudicate all matters involved therein and finally determine the merits of all claims to a lien upon the property and rights to the property in question, and in all cases where a claim or interest of the Board therein is established, may decree a sale of such property and rights of property by the proper officer of the court, and any sale made pursuant to such proceedings shall be made subject to any and all valid liens existing against said property or rights to property, at the date of filing of the notice of lien. Such action shall be heard by the court at the earliest possible date, and shall be entitled to preference on the calendar of the court over all other civil actions except petitions for judicial review of this chapter. In any suit to enforce a lien hereunder the owner of the property or rights of property affected by said lien may be allowed to file with the clerk of the Superior Court of the District of Columbia a written undertaking with two or more sureties to be approved by the court, or with corporate surety approved by the court, to the effect that he and they will pay the judgment that may be recovered and costs which judgment shall be rendered against all the persons so undertaking. Upon the approval of said undertaking the property or rights of property shall be released from such lien. No such undertaking shall be approved by the court until the owner of the property or rights of property in question shall have given at least two days' notice to the Board of his intention to apply to the courts therefor. Each notice shall give the names and residences of the persons intended to be offered as sureties and the time when the motion for such approval will be made, and such sureties shall make oath if required that they are worth over and above all debts and liabilities double the amount of said lien. The Board may appear and object to such approval. When corporate surety is offered and the undertaking bears a certificate of the clerk of the Superior Court of the District of Columbia that said corporation holds authority from the Secretary of the Treasury to do business in the District of Columbia and has a process agent therein, no notice shall be required. Such an undertaking as above mentioned may be offered before any suit is brought in order to discharge the property from such lien, in which case notice shall be given as aforesaid to the Board and the same proceedings shall be had as above directed in relation to the undertaking to be given after the commencement of the suit, except that when the surety is a corporation and the undertaking bears a certificate of the clerk of said Superior Court of the District of Columbia that said corporation holds authority from the Secretary of the Treasury to do business in the District of Columbia, and has a process agent therein, no notice shall be required; and said undertaking shall be to the effect that the owner of said property or rights of property and his said sureties will pay any judgment that may be rendered in any suit that may thereafter be brought for the enforcement of said lien. If such undertaking be approved before any suit is brought, the surety or sureties may be made parties to such suit; if the undertaking be approved after suit is brought, the surety or sureties shall ipso facto become parties to the suit, and in either case the decree of the court shall be against the surety or sureties as well as the owner. Subject to such regulations as the Board may prescribe, the Board shall issue a certificate of release of the lien if the Board finds that the liability for the amount of the contribution or tax imposed, together with all inter-

est in respect thereof, has been satisfied or for any other reason deemed proper by the Board. Such lien shall continue to be valid for a period of ten years from the date of filing of the notice thereof with the Recorder of Deeds of the District of Columbia, unless the same shall have been released of record, as hereinbefore provided. The foregoing remedy of the Board shall be cumulative and no action taken by the Board shall be or be construed to be an election on the part of the Board to pursue any remedy hereunder to the exclusion of any other remedy for which provision is made in this chapter.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 155(c)(44)(B), 84 Stat. 573.)

AMENDMENT

1970—Section 155(c)(44)(B) of Act July 29, 1970, Public Law 91–358, amended subsection (e) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(342 to 344) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (b), (e) and (k) in the particulars described in pars. 342 to 344, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46–301, 46–306, 46–308, 46–316.

§ 46–306. Deposit in unemployment trust fund.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 46–316.

§ 46–307. Amount and duration of benefits.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(345) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (c) with respect to prescribing regulations regarding reduction of benefits, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46–301, 46–309, 46–316.

NOTES TO DECISIONS

Due process

Discriminatory classification of employees, created by Congress' legitimate interest in exempting charitable organizations from payment of unemployment taxes, by denying benefits to employees of exempt organizations, is reasonable and does not violate due process. *T. F. Von Stauffenberg* v. *District Unemployment Compensation Board* (D.C. App. 1970, 269 A.2d 110).

§ 46–308. Method of paying benefits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46–314, 46–316.

§ 46–309. Eligibility for benefits.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(346 and 347) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (a) and (d) in the particulars described in pars. 346 and 347, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46–307, 46–310.

NOTES TO DECISIONS

Available for work

In order to be eligible for unemployment benefits claimant must be "available for work" which means that claimant must be genuinely attached to labor market and making adequate contacts for work. *Woodward & Lothrop, Inc.* v. *District of Columbia Unemployment Compensation Board et ano.* (1968, 392 F. 2d 479, 129 U.S. App. D.C. 155).

Eligibility for benefits

Where unemployment compensation claimant had been classified as (1) a secretary and (2) a bookkeeper, and had base period earnings in excess of $6,000, his rejection of last employer's offer of job as salesman at $1.50 per hour was irrelevant to issue of his initial eligibility for benefits. *Woodward & Lothrop, Inc.* v. *District of Columbia Unemployment Compensation Board et ano.* (1968, 392 F. 2d 479, 129 U.S. App. D.C. 155).

Evidence of availability

Where only evidence to establish claimant's availability for work was ex parte statements attributed to him, finding by appeals examiner that claimant was entitled to benefits was unsupported by evidence. *Woodward & Lothrop, Inc.* v. *District of Columbia Unemployment Compensation Board et ano.* (1968, 392 F. 2d 479, 129 U.S. App. D.C. 155).

Ordinarily an applicant's ex parte certificate may permit initial determination of eligibility for compensation benefits, but if appeal is taken and claim is put in issue, claimant may receive benefits only if there is evidence to support finding by Board that applicant is available for work. *Id.*

In order to support finding that claimant is available for work, claimant must adduce evidence that he has conducted an active search for work. *Id.*

Policy of Compensation Act

Basic policy underlying Unemployment Compensation Act is preference for compensation through employment rather than welfare compensation. *District Unemployment Compensation Board* v. *W. Hahn & Co., Inc.* (1968, 399 F. 2d 987, 130 U.S. App. D.C. 254).

Rules of evidence

Unemployment compensation board is not bound by strict rules of evidence and making of certain presumptions which underlie finding of eligibility may be necessary in order to have prompt determination of claims, but eligibility itself may not be presumed. *District Unemployment Compensation Board* v. *W. Hahn & Co., Inc.* (1968, 399 F. 2d 987, 130 U.S. App. D.C. 254).

§ 46–310. Disqualification for benefits.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(348 to 350) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (a), (c) and (e) with respect to prescribing regulations, as specified in pars. 348 to 350, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46–307, 46–309, 46–311.

NOTES TO DECISIONS

Applicability of Administrative Procedure Act

The District of Columbia Administrative Procedure Act (§ 1–1501 et seq.) applies to proceedings under Unemployment Compensation Act, and should be applied in post-hearing procedure by the Unemployment Compensation Board in an unemployment compensation proceeding. *Woodridge Nursery School* v. *T. G. Jessup and District of Columbia Unemployment Compensation Board* (D.C. App. 1970, 269 A. 2d 199).

Confidential information

In the case, the court held that a report, which plaintiff's employer filed with the District Unemployment Compensation Board and which stated that plaintiff was "discharged for dishonesty, shortages in cash and stock * * *," was absolutely privileged. *G. Goggins* v. *I. N. Hoddes, t/a etc.* (D.C. App. 1970, 265 A. 2d 302).

Policy of Compensation Act

Basic policy underlying Unemployment Compensation Act is preference for compensation through employment rather than welfare compensation. *District Unemployment Compensation Board* v. *W. Hahn & Co., Inc.* (1968, 399 F. 2d 987, 130 U.S. App. D.C. 254).

§ 46–311. Determination of claims.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(351 to 354) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (a), (c), (e) and (g) with respect to prescribing regulations and fixing rate of fees, as specified in pars. 351 to 354, to the District of Columbia Council, subject to the right of the Commissioner is provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46–301, 46–303.

NOTES TO DECISIONS

Applicability of Administrative Procedure Act

The District of Columbia Administrative Procedure Act (§ 1–1501 et seq.) applies to proceedings under Unemployment Compensation Act, and should be applied in post-hearing procedure by the Unemployment Compensation Board in an unemployment compensation proceedings. *Woodridge Nursery School* v. *T. G. Jessup and District of Columbia Unemployment Compensation Board* (D.C. App. 1970, 269 A. 2d 199).

Evidence of availability

Where only evidence to establish claimant's availability for work was ex parte statements attributed to him, finding by appeals examiner that claimant was entitled to benefits was unsupported by evidence. *Woodward & Lothrop, Inc.* v. *District of Columbia Unemployment Compensation Board et ano.* (1968, 392 F. 2d 479, 129 U.S. App. D.C. 155).

Ordinarily an applicant's ex parte certificate may permit initial determination of eligibility for compensation benefits, but if appeal is taken and claim is put in issue, claimant may receive benefits only if there is evidence to support finding by Board that applicant is available for work. *Id.*

In order to support finding that claimant is available for work, claimant must adduce evidence that he has conducted an active search for work. *Id.*

Final decision

In this case, the court held that a two-sentence decision of District of Columbia Unemployment Compensation Board, stating that decision of appeals examiner of certain date should be reversed because claimant believed that employer accepted offer to terminate her services on one date rather than on another date, was inadequate as a finding of fact and a conclusion of law. *Woodridge Nursery School* v. *T. G. Jessup and District of Columbia Unemployment Compensation Board* (D.C. App. 1970, 269 A. 2d 199).

Last known address

Phrase "last known address" within meaning of District of Columbia Unemployment Compensation Act that appeal from decision of claims deputy may be taken by claimant within 10 days after notification thereof, or after date such notification was mailed to his "last known address" is not invariably the most recent mailing address of claimant. *E. MacKenzie* v. *D.C. Unemployment Compensation Board* (1968, 393 F. 2d 659, 129 U.S. App. D.C. 258).

Where District of Columbia Unemployment Compensation Board found claimant eligible for unemployment benefits, and thereafter claims deputy ruled that claimant was not available for work and mailed notice of such determination to temporary address of claimant in St. Paul, Minnesota, instead of to permanent address of claimant in Washington, D.C., and it was know that temporary address had been abandoned, notice was not sufficient to start period for taking an appeal by claimant because not "last known address" within meaning of statute. *Id.*

Notice of appeal

Even if the Unemployment Compensation Board deemed it unnecessary to permit a reply to petition for appeal in an unemployment compensation proceeding, the other party at least should have been given notice that the appeal had been filed. *Woodridge Nursery School* v. *T. G. Jessup and District of Columbia Unemployment Compensation Board* (D.C. App. 1970, 269 A. 2d 199).

Notice to base period employers

Under section of Unemployment Compensation Act that claimant and other parties to proceedings shall be promptly notified of initial determination with respect to whether or not benefits may be payable, notice to all "base period employers" is required. *District Unemployment Compensation Board* v. *W. Hahn & Co., Inc.* (1968, 399 F. 2d 987, 130 U.S. App. D.C. 254).

Under section of Unemployment Compensation Act providing that if disqualification of claimant of benefits has been alleged or may exist benefits shall not be paid prior to expiration of period for appeal, there must be some opportunity to challenge claimant's eligibility before payments are made. *Id.*

Rules of evidence

Unemployment compensation board is not bound by strict rules of evidence, and making of certain presumptions which underlie finding of eligibility may be necessary in order to have prompt determination of claims, but eligibility itself may not be presumed. *District Unemployment Compensation Board* v. *W. Hahn & Co., Inc.* (1968, 399 F. 2d 987, 130 U.S. App. D.C. 254).

Time to appeal

Where district unemployment compensation board on March 6 sent employer notice stating that former employee had filed claim for unemployment compensation and that eligibility to receive benefits would be decided later, and on March 14 board notified employer that claimant had been paid his first weekly benefit, 10-day period for filing of appeal did not begin to run until March 14, and employer's appeal filed March 23 was timely. *District Unemployment Compensation Board* v. *W. Hahn & Co., Inc.* (1968, 399 F. 2d 987, 130 U.S. App. D.C. 254).

§ 46–312. Court review.

Within thirty days after the decision of the Board has become final, any party to the proceeding may appeal from the decision to the Superior Court of the District of Columbia. Upon the filing of any such appeal notice thereof shall be served upon the Board by the appellant and upon any other party to the proceedings. Such appeal shall be heard by the court at the earliest possible date and shall be given precedence over all other civil cases. It shall not be necessary on any such appeal to enter exceptions to the rulings of the Board and no bond shall be required for entering such appeal. In no event shall

any appeal act as a supersedeas. In any appeal under this section the findings of the Board, or of the examiner or appeal tribunal, as the case may be, as to the facts, if supported by evidence and in the absence of fraud, shall be conclusive, and the jurisdiction of said court shall be confined to questions of law; *Provided,* That no appeal shall be permitted under this section by any party who has not first exhausted his administrative remedies as provided by this chapter. (Aug. 28, 1935, 49 Stat. 953, ch. 794, § 12, formerly § 13; renumbered and amended June 25, 1936, 49 Stat. 1921, ch. 804; June 4, 1943, 57 Stat. 118, ch. 117; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, §§ 155(c)(44)(C), 163(j)(2), 84 Stat. 573, 583.)

AMENDMENTS

1970—Section 155(c)(44)(C) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

Section 163(j)(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out the designation (a) preceding the first paragraph and by striking out subsection (b). See 1967 edition of the D.C. Code.

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46–303, 46–311.

§ 46–313. Administration.

* * * * *

(h) In the case of contumacy by, or refusal to obey a subpena issued to, any person, the Board may invoke the aid of the Superior Court of the District of Columbia in requiring the attendance and testimony of witnesses and the production of books, papers, correspondence, memoranda, and other records. Such court may issue an order requiring such person to appear before the Board or officer designated by the Board, there to produce records, if so ordered, or to give testimony touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof. Any person who shall, without just cause, fail or refuse to attend and testify or to answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other records, if in his power so to do, in obedience to the subpena of the Board, shall be guilty of a misdemeanor, and upon conviction shall be subject to a fine of not more than $1,000 or to imprisonment for a term of not more than one year, or both.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 155(c)(44)(D), 84 Stat. 573.)

AMENDMENT

1970—Section 155(c)(44)(D) of Act July 29, 1970, Public Law 91–358, amended subsection (h) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(355 to 357) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (a), (b) and (f) in the particulars described in pars. 355 to 357, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46–314, 46–315, 46–317.

NOTES TO DECISIONS

Confidential information

In the case, the court held that report, which plaintiff's employer filed with the District Unemployment Compensation Board and which stated that plaintiff was "discharged for dishonesty, shortages in cash and stock * * *," was absolutely privileged. *G. Goggins* v. *I. N. Hoddes, t/a etc.* (D.C. App. 1970, 265 A. 2d 302).

§ 46–314. Method of paying administrative expenses.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 46–315. District Unemployment Compensation Board.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 46–301, 46–304.

§ 46–316. Reciprocal arrangements.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(358) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) with respect to entering into reciprocal arrangements, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 46–301.

§ 46–317. Records and reports

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(359) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) with respect to prescribing work records to be kept, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

NOTES TO DECISIONS

Confidential information

In this case, the court held that a report, which plaintiff's employer filed with the District Unemployment Compensation Board and which stated that plaintiff was "discharged for dishonesty, shortages in cash and stock * * *," was absolutely privileged. *G. Goggins* v. *I. N. Hoddes, t/a etc.* (D.C. App. 1970, 265 A. 2d 302).

§ 46–326. Commissioners of the District of Columbia.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TITLE 47.—TAXATION AND FISCAL AFFAIRS

Chap. Sec.
24. Superior Court, Tax Division..... 47–2401

Chapter 1.—GENERAL PROVISIONS

Sec.
47–145. Use of appropriated funds to promote demonstrations to influence legislation or other governmental action—Exception.

§ 47–106. Apportionment of appropriations for contingent and miscellaneous expenses.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–107. Appropriations for contingent expenses—Accounting.

REFERENCES IN TEXT

Section 104 of former title 5 of the U.S. Code referred to in text, has been transferred to title 31 U.S.C. § 492–2.

§ 47–112. Disbursing officer — Appointment — Bond — Duties.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–112a. Examination of vouchers and disbursement thereon—Accountability.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–112b, 47–120b.

§ 47–112b. Exceptions to liability for overpayments on Government bills of lading or transportation requests.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–120b.

§ 47–113a. Appointment of deputy disbursing officer and assistant disbursing officers—Compensation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–113c. Penalties for official misconduct of disbursing officers—Bond.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(360) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to fixing amounts of bonds, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 47–120a. Liability of auditor or employees—Exceptions—Bond.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(360) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to fixing amounts of bonds, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–112b, 47–120b.

§ 47–120b. Enforcement of liability against persons certifying—Application for decision by Comptroller General.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–112b.

§ 47–122. Chief clerk to act in event of absence or disability of auditor.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(361) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to requiring the giving of bond, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 47–131. Repealed. October 3, 1964, 78 Stat. 1001, Pub. L. 88–622, § 6; effective July 1, 1963.

Section, act July 9, 1946, 60 Stat. 514, ch. 544, § 1, established a working capital fund for industrial enterprises at the workhouse and reformatory. The matter is now covered by sections 24–451 to 24–455.

Section 6 of the act also repealed the proviso in the par. following the caption "Operating Expenses" under the heading "DEPARTMENT OF CORRECTIONS" in the first section of the act of July 5, 1952, 66 Stat. 380. This matter was not classified to the code.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 24–418a, 24–451, 24–455.

§ 47–135. Investment of District of Columbia's funds in United States Government securities—Deposit of interest to credit of appropriate fund—Sale and exchange of such securities.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–136. Maintenance and repairs of vehicles—Working fund.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–137. Working fund for printing, duplicating, and photographing.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–138. Restoration of lapsed appropriations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–140. Trust funds held by District of Columbia—Lack of communication by owners of fund—Notice to owners that claims will be barred.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–141 to 47–144.

§ 47–141. Publication of notice relating to unclaimed funds—Form and contents of notice—Deposit of unclaimed funds in the Treasury of the United States.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–140, 47–142 to 47–144.

§ 47–142. Small sums—Exemptions from notice requirements.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–143, 47–144.

§ 47–143. Deductions of expenses upon refunds to depositors—Deposit of deductions in the Treasury of the United States.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–144.

§ 47–144. "Commissioners" defined.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–143.

§ 47–145. Use of appropriated funds to promote demonstrations to influence legislation or other governmental action—Exception.

No funds appropriated for the government of the District of Columbia may be used to furnish materials or services to promote or further any demonstration in the District of Columbia undertaken for the purpose of influencing legislation or other governmental actions of the United States Government or the government of the District of Columbia, except that nothing in this section shall preclude the government of the District of Columbia from taking such emergency action as the Commissioner of the District of Columbia determines necessary for the preservation of the health, safety, or welfare of any person within the District of Columbia. (Aug. 2, 1968. Pub. L. 90–450, title IV, § 402, 82 Stat. 615.)

AUTHORITY OF COMMISSIONER AND DISTRICT COUNCIL DELEGATION OF FUNCTIONS

See § 804 of Pub. L. 91–106, set out as a note to sec. 47–1551c.

LIMITATION ON NEW EMPLOYEES DURING FISCAL YEAR 1970

Section 802 of act, Oct. 31, Pub. L. 91–106, provided: "During the fiscal year ending June 30, 1970, no person shall be appointed—

"(1) as a full-time employee to a permanent, authorized position in the government of the District of Columbia during any month when the number of such employees is greater than 41,500; or

"(2) as a temporary or part-time employee in the government of the District of Columbia during any month in which the number of such employees exceeds the number of such employees for the same month of the preceding fiscal year."

SAVINGS PROVISIONS OF PUB. L. 91–106

See § 805 of Pub. L. 91–106, set out as a note to sec. 47–1551c.

SHORT TITLE

The enacting clause of Act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

The enacting clause of Act Aug. 2, 1968, Pub. L. 90–450, provided: That this Act [Amending sections 25–107, 25–115(a), 47–1567b(a), 47–1571a, 47–1574b, 47–1586f(a)(4), 47–1589(b), 47–2501a, 47–2601, 47–2602, 47–2605, 47–2701, and 47–2702 and enacting sections 31–1118 and 47–145] may be cited as the "District of Columbia Revenue Act of 1968".

Chapter 2.—BUDGET ESTIMATES

Sec.

47–204a. Reimbursement of United States for part of costs of space for the United States Attorney and the United States Marshal for the District of Columbia.

47–204b. Certain expenses of United States Court of Appeals for the District of Columbia Circuit.

§ 47–201. Salaries of force for protection of courthouse—Payment—Estimates.

TRANSFER OF FUNCTIONS WITH RESPECT TO APPROPRIATIONS

Section 403 of Reorganization Plan No. 3 of 1967, effective November 3, 1967, provides:

"Budget. Functions with respect to requests for regular, supplemental, or deficiency appropriations for the District of Columbia (made in pursuance of section 214 of the Budget and Accounting Act, 1921, as amended (31 U.S.C. 22) or in pursuance of any other provision of law) are hereby transferred so as to accord with the following:

"(a) The Commissioner of the District of Columbia shall prepare such requests and submit them to the District of Columbia Council.

"(b) If the Council approves the requests so submitted, without revision, it shall return them to the Commissioner and the Commissioner shall submit them to the Bureau of the Budget.

"(c) If the Council revises the requests so submitted to the Council, it shall return them, with the revisions, to the Commissioner. If the Commissioner concurs in the revisions he shall submit the revised requests to the Bureau of the Budget.

"(d) If the Commissioner does not concur in any one or more of the revisions proposed by the Council he shall return the requests, together with the Council's revisions, to the Council and append a statement of the reasons for not concurring. If the Council, by a three-fourths vote of its members present and voting insists upon any one or more of its original revisions, it shall return the requests and the revisions upon which it insists to the Commissioner within five days and so inform him, and he shall submit the requests, incorporating the revisions upon which the Council insists, to the Bureau of the Budget. If such a three-fourths vote does not prevail or the Council does not act on the requests, the Council shall return

the requests to the Commissioner and he shall submit them (without the revisions) to the Bureau of the Budget.

"(e) If the Council does not approve or revise the requests within thirty days next following their receipt, the requests shall be deemed to be approved by the Council.

"(f) The authority of the Commissioner under section 305 of this reorganization plan (to delegate functions) shall not extend to his functions under this section of concurring or not concurring in revisions of requests proposed by the Council."

§ 47–202. Estimates—Repairs to schools.

TRANSFER OF FUNCTIONS WITH RESPECT TO APPROPRIATIONS

See section 403 of Reorganization Plan No. 3 of 1967, set out as a note under § 47–201.

§ 47–203. Estimates for schools to be in accordance with 5-year building program.

TRANSFER OF FUNCTIONS WITH RESPECT TO APPROPRIATIONS

See section 403 of Reorganization Plan No. 3 of 1967, set out as a note under § 47–201.

§ 47–204. Certain expenses of United States District Court for the District of Columbia.

(a) (1) Until the day before the effective date of the District of Columbia Court Reorganization Act of 1970, the Commissioner of the District of Columbia shall reimburse the United States for 60 per centum of the expenditures made on or before that day for the expenses of the United States District Court for the District of Columbia that are described in paragraph (2). During the thirty-month period beginning on such effective date, the Executive Officer of the District of Columbia courts shall reimburse the United States for expenditures made during that period for such expenses at the following rates of reimbursement:

(A) 40 per centum for the first eighteen months of such period.

(B) 20 per centum for the remainder of such period.

(2) The expenses referred to in paragraph (1) are fees of witnesses, fees of jurors, pay of bailiffs and criers (including salaries of deputy marshals who act as bailiffs or criers), and all other miscellaneous expenses of the United States District Court for the District of Columbia.

(b) Beginning after the thirty-month period referred to in subsection (a), the Executive Officer of the District of Columbia courts shall reimburse the United States for the District of Columbia's share of the cost for jury selection and grand jury expenses, as determined by the Director of the Administrative Office of the United States Courts. Estimates of the District of Columbia's share of such costs for each fiscal year shall be submitted to the Joint Committee on Judicial Administration of the District of Columbia courts for transmission with the annual estimate of the District of Columbia courts under section 11–1743.

(c) Reimbursement made under this section shall be made from funds in the Treasury to the credit of the District of Columbia. (June 30, 1906, 34 Stat. 763, ch. 3914, § 7; June 29, 1922, 42 Stat. 668, ch. 249; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 173(b), 84 Stat. 592.)

REFERENCE IN TEXT

The Reorganization Act of 1970 referred to in text is title I of Pub. L. 91–358.

AMENDMENT

1970—Section 173(b) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CHANGE OF NAME

Act June 25, 1936, substituted "District Court of the United States for the District of Columbia" for "Supreme Court of the District of Columbia."

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

ADMINISTRATIVE OFFICE OF UNITED STATES COURTS

Payment of certain expenses of United States Courts by Director of the Administrative Office, see 28 U.S.C. § 601 et seq.

TRANSFER OF FUNCTIONS WITH RESPECT TO APPROPRIATIONS

See section 403 of Reorganization Plan No. 3 of 1967, set out as a note under § 47–201.

§ 47–204a. Reimbursement of United States for part of costs of space for the United States Attorney and the United States Marshal for the District of Columbia.

Beginning on the effective date of this title, the Executive Officer of the District of Columbia courts shall reimburse to the United States from any funds in the Treasury to the credit of the District of Columbia courts the amount determined by the Administrator of General Services to be necessary to cover seventy-five per centum of the costs of operation, maintenance, and repair of space used by the United States Attorney and the United States Marshal for the District of Columbia. (July 29, 1970, Pub. L. 91–358, § 173(a)(2), title I, 84 Stat. 591.)

REFERENCE IN TEXT

This title, referred to in text, consists of sections 101 to 199, title I of Pub. L. 91–358 as enumerated in table of contents. (See note prec. title 11.)

CODIFICATION

This section consists of par. (a)(2) of sec. 173 of Pub. L. 91–358.

EFFECTIVE DATE

See note preceding section 11–101.

§ 47–204b. Certain expenses of United States Court of Appeals for the District of Columbia Circuit.

Until the day before the effective date of the District of Columbia Court Reorganization Act of 1970, the Commissioner of the District of Columbia shall reimburse the United States for 30 per centum of the expenditures made on or before that day for the expenses of the United States Court of Appeals for the District of Columbia Circuit. During the thirty-month period beginning on such effective date, the Executive Officer of the District of Columbia Courts shall reimburse the United States for expenditures made during that period for such expenses at the following rates of reimbursement:

(1) 20 per centum for the first eighteen months of such period.

(2) 10 per centum for the remainder of such period.

Notwithstanding any other provision of law, no reimbursement for such expenses shall be required after the expiration of the thirty-month period beginning on such effective date. (July 29, 1970, Pub. L. 91–358, § 173(d), title I, 84 Stat. 592.)

REFERENCE IN TEXT

District of Columbia Court Reorganization Act of 1970 is title I of Pub. L. 91–358. See note preceding sec. 11–101.

EFFECTIVE DATE OF REORGANIZATION ACT OF 1970

See note preceding section 11–101.

§ 47–205. Commissioners' annual estimates—To include report of assignment of certain market employees.

TRANSFER OF FUNCTIONS WITH RESPECT TO APPROPRIATIONS

See section 403 of Reorganization Plan No. 3 of 1967, set out as a note under § 47–201.

§ 47–206. Estimates for employees and for maintenance of sewers.

TRANSFER OF FUNCTIONS WITH RESPECT TO APPROPRIATIONS

See section 403 of Reorganization Plan No. 3 of 1967, set out as a note under § 47–201.

§ 47–207. Estimates for employees for maintenance of highway bridge and approaches.

TRANSFER OF FUNCTIONS WITH RESPECT TO APPROPRIATIONS

See section 403 of Reorganization Plan No. 3 of 1967, set out as a note under § 47–201.

§ 47–208. Estimates for witnesses and securing evidence in claims against the District of Columbia.

TRANSFER OF FUNCTIONS WITH RESPECT TO APPROPRIATIONS

See section 403 of Reorganization Plan No. 3 of 1967, set out as a note under § 47–201.

§ 47–209. Estimates for assessment of real estate.

TRANSFER OF FUNCTIONS WITH RESPECT TO APPROPRIATIONS

See section 403 of Reorganization Plan No. 3 of 1967, set out as a note under § 47–201.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–604, 47–707.

§ 47–210. Estimates for water department.

TRANSFER OF FUNCTIONS WITH RESPECT TO APPROPRIATIONS

See section 403 of Reorganization Plan No. 3 of 1967, set out as a note under § 47–201.

§ 47–211. Estimates for expenses of District—Order of arrangement.

TRANSFER OF FUNCTIONS WITH RESPECT TO APPROPRIATIONS

See section 403 of Reorganization Plan No. 3 of 1967, set out as a note under § 47–201.

REVIEW OF REQUESTS FOR APPROPRIATIONS

Section 102 of Act Jan. 5, 1971, Pub. L. 91–650, provides: "The Office of Management and Budget shall carefully examine and review each request of the District of Columbia for regular, supplemental, and deficiency appropriations to determine (1) the priorities of the expenditures for which each appropriation is requested, and (2) where reductions can be made in such expenditures."

CROSS REFERENCE

For provisions relating to budgetary and fiscal information and data, see 31 U.S.C. 1151 et seq.

§ 47–212. Publication of estimates of the District.

TRANSFER OF FUNCTIONS WITH RESPECT TO APPROPRIATIONS

See section 403 of Reorganization Plan No. 3 of 1967, set out as a note under § 47–201.

§ 47–213. Estimates for offices of probation officer and Register of Wills, and Commission on Mental Health.

The annual estimates of expenditures and appropriations necessary for the maintenance and operation of the courts submitted by the Director of the Administrative Office of the United States Courts shall include estimates of appropriations for the operation and maintenance of the office of the probation officer of the United States District Court for the District of Columbia, the office of the Register of Wills of the District of Columbia, and the Commission on Mental Health, until eighteen months after the effective date of the District of Columbia Court Reorganization Act of 1970. (Aug. 2, 1949, 63 Stat. 491, ch. 383, § 6; July 29, 1970, Pub. L. 91–358, § 173(c), title I, 84 Stat. 592.)

AMENDMENT

1970 Section 173(c) of Act July 29, 1970, Public Law 91–358 amended section by inserting before the period at the end ", until eighteen months after the effective date of the District of Columbia Court Reorganization Act of 1970".

EFFECTIVE DATE OF REORGANIZATION ACT OF 1970

See note preceding sec. 11–101.

REFERENCE IN TEXT

District of Columbia Court Reorganization Act of 1970 is title I of Pub. L. 91–358. See note preceding sec. 11–101.

TRANSFER OF FUNCTIONS WITH RESPECT TO APPROPRIATIONS

See section 403 of Reorganization Plan No. 3 of 1967, set out as a note under § 47–201.

Chapter 3.—COLLECTION AND DISBURSEMENT OF TAXES

§ 47–302. Collector of taxes—Bond.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–303. Deputy collector of taxes—Duties—Bond.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(362) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to requiring the giving of bond, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 47–305. Account books to be kept by collector.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–307. Waiver of interest and penalties.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–308. Collector may omit uncollectible taxes from record of assets.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–309. Disbursement of taxes and appropriations—Vouchers—Settlement of accounts.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–112, 47–310.

§ 47–310. Requisition by Commissioners—Appropriations not to be exceeded—Accounting.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–311. "Miscellaneous Trust Fund Deposits"—Advances—Audit—Separate accounts to be kept.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§§ 47–312, 47–313.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 45–735.

§ 47–314. Abatement of taxes.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 4.—DESIGNATION OF PROPERTY FOR ASSESSMENT AND TAXATION

§ 47–401. Squares, lots, blocks, parcels, to be numbered.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–402.

§ 47–403. Daily transcript from records of recorder of deeds and register of wills.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–404. Designation of land for assessment—Beyond city limits.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–408.

§ 47–405. Designation of land to be numbered.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–406. Designation of land—Plat books to be made under authority of Commissioners—Custody of surveyor.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–407. Surveyor's office to make daily transcripts of records of deeds, wills, condemnations, and decrees.

For the purpose of keeping said books constantly current and up to date, the said commissioners shall cause an employee of the surveyor's office to make daily transcripts of all deeds of conveyance, wills, condemnations, decrees, and other instruments or proceedings by which boundaries are changed; for which purpose, such employee of the surveyor's office shall at all times during business hours have full and free access to all records of the recorder of deeds, register of wills, clerk of the United States District Court for the District of Columbia, clerk of the Superior Court of the District of Columbia, marshal, and other officials; and the surveyor shall furnish to the assessor a copy of such transcript, from which a duplicate set of taxation and assessment plat books shall be maintained by the said assessor: *Provided,* That the current series of taxation and assessment plat books in the surveyor's office shall be the standard book of reference for all purposes of assessment and taxation by all departments of the government of the District of Columbia. (Feb. 23, 1905, 33 Stat. 738, ch. 735, § 4; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 161(f), 84 Stat. 582.)

AMENDMENT

1970—Section 161(f) of Act July 29, 1970, Public Law 91–358 amended section by inserting after "clerk of the United States District Court for the District of Columbia," the following: "clerk of the Superior Court of the District of Columbia,".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS

Reorganization Order No. 27 dated Apr. 3, 1953, as amended Apr. 10, 1953, provided that the functions of the Office of the Surveyor described in this section would continue to be delegated to the Office of the Assessor. This order was issued by the Board of Commissioners pursuant to Reorganization Plan No. 5 of 1952. The order and plan are set out in the Appendix to Title I, Administration.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 5.—RATES, RECORDS, AND SURPLUS FUNDS

§ 47–501. Assessment of taxes on real and personal property—Rate of taxation—Collection.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(363) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to ascertaining, determining, and fixing annually rate of taxation, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 47–502. Treasury Department to keep record of receipts and disbursements relative to District of Columbia.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–503.

§ 47–503. Disposition of surplus funds—To be applied to succeeding year's expenditures.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(364) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in the particulars described in par. 364, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 6.—TAX ASSESSOR

§ 47–602. Assessor to furnish bond.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–603. Records to be kept by assessor—Duties of assessor.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–604. Board of assistant assessors—Appointment—Qualifications—Clerk.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–707.

§ 47–606. Assessor to have power to administer oaths and summon witnesses.

The assessor of the District of Columbia and each member of said Board of Assistant Assessors in the discharge of any of the duties devolved upon him or them, or the Board of Equalization and Review, may administer all necessary oaths or affirmations. The assessor of the District of Columbia, or in his absence the temporary chairman of said board, shall have power to summon the attendance of any person before said board to be examined under oath touching such matters and things as the Board of Assistant Assessors or the said Board of Equalization and Review may deem advisable in the discharge of their duties; and any member of the Metropolitan police force of the District of Columbia may serve subpoenas in his behalf. Such fees shall be allowed witnesses so examined, to be paid out of the contingent fund of the commissioners, as are allowed in civil actions before the Superior Court of the District of Columbia. Any person summoned and examined as aforesaid who shall knowingly make false oath or affirmation shall be guilty of perjury, and upon conviction thereof be punished according to the laws in force for the punishment of perjury. (Aug. 14, 1894, 28 Stat. 285, ch. 287, § 13; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(45), 84 Stat. 573.)

AMENDMENT

1970—Section 155(c)(45) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS

Present status and functions of the Assessor, Board of Assistant Assessors, and Board of Equalization and Review, see transfer of functions note under § 47–604 in main edition.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–604, 47–707.

Chapter 7.—ASSESSMENT OF REAL PROPERTY

§§ 47–701, 47–702.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–604, 47–707.

§ 47–704. Commissioners to supply Board of Assistant Assessors with plats.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–604, 47–707.

§ 47–705. Assistant Assessor's valuation to be made separately for improvements and each tract or lot.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–604, 47–707.

§ 47–706. Board of Assistant Assessors to make annual tabulated report of property assessed.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–604, 47–707.

§ 47–707. Penalties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–604.

§ 47–708. Board of Equalization and Review—Annual meeting—Notice of meetings—Duties.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–604, 47–707, 47–717, 47–2405.

§ 47–709. Valuation of real property to be complete on the first Monday of May annually.

The valuation of the real property made and equalized as aforesaid shall be completed not later than the first Monday of May annually. The valuation of said real property made and equalized as aforesaid shall be approved by the Commissioners not later than July 1, annually, and when approved by the Commissioners shall constitute the basis of taxation for the next succeeding year and until another valuation is made according to law, except as hereinafter provided. Any person aggrieved by any assessment, equalization or valuation made may within six months after October 1 of the year in which such assessment, equalization, or valuation

is made, appeal from such assessment, equalization, or valuation in the same manner and to the same extent as provided in sections 47–2403 and 47–2404: *Provided, however*, That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided, except that, in case of increase of valuation of real property over that for the immediately preceding year, where no notice in writing of such increase of valuation is given the taxpayer prior to March 1 of the particular year, no such complaint shall be required for appeal. (Aug. 17, 1937, ch. 690, title IX, § 5(a), as added May 16, 1938, 52 Stat. 372, § 223, § 8, and amended July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5(b); July 10, 1952, 66 Stat. 544, ch. 649, § 3(c); July 29, 1970, Pub. L. 91–358, title I, § 161(a)(5), 84 Stat. 580.)

CODIFICATION

Section comprises the last two sentences of subsection (a) of section 5 of title IX of act Aug. 17, 1937. Remainder of such subsection (a) is classified to § 47–708. Provisions contained in this section are also classified to § 47–2405.

AMENDMENT

1970—Section 161(a)(5) of Act July 29, 1970, Public Law 91–358 amended section by striking out "ninety days" and inserting "six months" in lieu thereof.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS

Composition and functions of Board of Equalization and Review, see note under § 47–604.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–604, 47–707, 47–2405.

§ 47–710. Real property and improvements becoming subject to taxation to be listed annually.

Annually, on or prior to July 1 of each year, the Board of Assistant Assessors, shall make a list of all real estate which shall have become subject to taxation and which is not then on the tax list, and affix a value thereon, according to the rules prescribed by law for assessing real estate; shall make return of all new structures erected or roofed, and additions to or improvements of old structures which shall not have theretofore been assessed, specifying the tract or lot of land on which each of such structures has been erected, and the value of such structure, and they shall add such valuation to the assessment made on such tract or lot. When the improvements on any lot or tract of land shall become damaged or be destroyed from any cause, the said board of assistant assessors shall reduce the assessment on said property to the extent of such damage: *Provided*, That the Board of Equalization and Review shall hear such complaints as may be made in respect of said assessments between September 1 and September 30 and determine the same not later than October 15 of the same year.

Any person aggrieved by any assessment or valuation made in pursuance of this section may, within six months after October 15 of the year in which said violation or assessment is made, appeal from such assessment or valuation in the same manner and to the same extent as provided in sections 47–2403 and 47–2404: *Provided, however*, That if the taxpayer shall be notified in writing not later than September 1 of a particular year of the valuation of the real estate valued in accordance with this section, such taxpayer shall first make a complaint to the Board of Equalization and Review respecting such assessment as herein provided. (Aug. 17, 1937, ch. 690, title IX, § 5(b), as added May 16, 1938, 52 Stat. 372, ch. 223, § 8, and amended July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5(b); July 10, 1952, 66 Stat. 545, ch. 649, § 3(c); July 29, 1970, Pub. L. 91–358, title I, § 161(a)(5), 84 Stat. 580.)

CODIFICATION

The last sentence of this section is also classified to § 47–2405.

AMENDMENT

1970—Section 161(a)(5) of Act July 29, 1970, Public Law 91–358 amended section by striking cut "ninety days" and inserting "six months" in lieu thereof.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS

Composition and functions of Board of Equalization and Review, see transfer of functions note under § 47–604.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–604, 47–707, 47–2405.

§ 47–711. New buildings under roof to be included in list.

In addition to the annual assessment of all real estate made on or prior to July 1 of each year there shall be added a list of all new buildings erected or under roof prior to January 1 of each year, in the same manner as provided by law for all annual additions; and the amounts thereof shall be added as assessment for the second half of the then current year payable in the month of March. When the improvements on any lot or tract of land shall become damaged or be destroyed from any cause prior to January 1 of each year the said board of assistant assessors shall reduce the assessment on said property to the extent of said damage for the second half of the then current year payable in the month of March. The Board of Equalization and Review shall hear such complaints as may be made in respect of said assessments for the second half of said year between March 1 and March 31 and determine said complaints not later than April 15 of the same year. Any person aggrieved by any assessment made in pursuance of this section may, within six months after April 15 of the year in which such assessment is made, appeal from such assessment in the same manner and to the same extent as provided in sections 47–2403 and 47–2404: *Provided, however*, That if the taxpayer shall be notified in writing not later than March 1 of a particular year of the valuation of the real estate valued in accordance with this section, such taxpayer shall first make a complaint to the Board of Equalization and Review respecting such assessment as herein provided. (Aug. 17, 1937, ch. 690, title IX, § 5(c), as added May 16, 1938, 52 Stat. 372, ch. 223, § 8, and amended July 26, 1939, 53

Stat. 1109, ch. 367, title IV, § 5(b); July 10, 1952, 66 Stat. 545, ch. 649, § 3(c); July 29, 1970, Pub. L. 91–358, title I, § 161(a)(5), 84 Stat. 580.)

CODIFICATION

The last sentence of this section is also classified to § 47–2405.

AMENDMENT

1970—Section 161(a)(5) of Act July 29, 1970, Public Law 91–358 amended section by striking out "ninety days" and inserting "six months" in lieu thereof.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS

Composition of Board of Equalization and Review and abolition of Board of Assistant Assessors, see transfer of functions note under § 47–604.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2405.

§ 47–712. Assessment of omitted property—Voided assessments, reassessment of property.

If the board of assistant assessors shall learn that any property liable to taxation has been omitted from the assessment for any previous year or years, or has been so assessed that the assessment made was void, it shall be their duty at once to reassess this property for each and every year for which it has escaped assessment and taxation, and report the same, through the assessor, to the collector of taxes who shall at once proceed to collect the taxes so in arrears as other taxes are collected: *Provided,* That no property which has escaped assessment and taxation shall be liable under this section for a period of more than three years prior to such assessment, except in the case of property involved in litigation. In addition to the duties of the assessor hereinbefore provided, it shall be the duty of the assessor upon reassessment as herein provided to notify the taxpayer by writing of the fact of such reassessment. Any person aggrieved by any reassessment made in pursuance of this section may, within six months after notice of said reassessment, appeal from said reassessment in the same manner and to the same extent as provided in sections 47–2403 and 47–2404. (Aug. 17, 1937, ch. 690, title IX, § 5(d), as added May 16, 1938, 52 Stat. 372, ch. 223, § 8; July 29, 1970, Pub. L. 91–358, title I, § 161(a)(5), 84 Stat. 580.)

AMENDMENT

1970—Section 161(a)(5) of Act July 29, 1970, Public Law 91–358 amended section by striking out "ninety days" and inserting "six months" in lieu thereof.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–604, 47–707, 47–2405.

§§ 47–713 to 47–715.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 47–716.

§ 47–716. Application for redistribution or reassessment—Notice—Validity.

Whenever application is made according to law for the reassessment or redistribution of taxes by reason of the subdivision of any tract of land in the District, the board of assistant assessors charged with the assessment of real estate in the District is hereby authorized and directed to reassess and redistribute any general or special assessment or tax levied or due and unpaid in accordance with provisions of laws for the assessment and equalizations of valuations of real estate in the District for taxation. The assessor shall promptly notify the owners of record of the land, the taxes of which shall be reassessed or redistributed. Notices in such case shall be served upon each lot or parcel owner if he or she be a resident of the District and his or her residence known, and if he or she be a nonresident of the District, or his or her residence unknown, such notice shall be served on his or her tenant or agent, as the case may be, and if there be no tenant or agent known to the Commissioners, then they shall give notice of such assessment by advertisement twice a week for two weeks in some newspaper published in said District. The service of such notice, where the owner or his tenant or agent resides in the District, shall be either personal or by leaving the same with some person of suitable age at the residence or place of business of such owner, agent, or tenant; and return of such service, stating the manner thereof, shall be made in writing and filed in the office of said Commissioners. Any person aggrieved by such reassessment or redistribution, may within six months after notice of such reassesment or redistribution, appeal from such reassessment or redistribution in the same manner and to the same extent as provided in sections 47–2403 and 47–2404.

Any reassessment or redistribution made under sections 47–713 to 47–717 shall be as valid and effectual upon the various parts of the property, in the same manner and to the same extent as if the tax or assessment so reassessed or redistributed had been laid originally thereon under the various laws appertaining thereto. No payment or failure to pay a tax or assessment upon any such part shall change or affect the liability of the other parts of such property for any tax or assessment so reassessed or redistributed. (Mar. 1, 1921, 41 Stat. 1196, ch. 95, § 4; Aug. 17, 1937, ch. 690, title IX, § 5(e), as added May 16, 1938, 52 Stat. 374, ch. 223, § 8; July 29, 1970, Pub. L. 91–358, title I, § 161 (a)(5), 84 Stat. 580.)

CODIFICATION

Section consolidates section 5(e) of title IX of act Aug. 17, 1937, with section 4 of act Mar. 1, 1921. The first paragraph is from act Aug. 17, 1937, and the second paragraph is from act Mar. 1, 1921.

AMENDMENT

1970—Section 161(a)(5) of Act July 29, 1970, Public Law 91–358 amended section by striking out "ninety days" and inserting "six months" in lieu thereof.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS

Board of Assistant Assessors (real estate) abolished and functions transferred to Board of Equalization and Review, see notes under § 47–604.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2405.

§ 47–717. Reassessment of real estate by Board of Assistant Assessors.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–716.

§ 47–721. Reassessment of taxes declared void by court.

The Commissioners of the District of Columbia are hereby authorized and directed, in all cases where general taxes or assessments for local improvements in the District of Columbia may be quashed, set aside, or declared void by the Superior Court of the District of Columbia, by reason of an imperfect or erroneous description of the lot or parcel of ground against which the same shall have been levied by reason of such tax or assessment not having been authenticated by the proper officer, or of a defective return of service of notice, or for any technical reason other than the right of the public authorities to levy the tax or make the improvement in respect of which the assessment was levied, to reassess the lot for parcel of ground in respect of such general taxes or the improvement mentioned in such defective assessment, with power to collect the same according to existing laws relating to the collection of assessments and taxes: *Provided,* That in cases where such taxes or assessments shall be quashed or declared void by said court for the reasons hereinbefore stated, the reassessment herein provided for shall be made within ninety days after the judgment or decree of said court quashing or setting aside such taxes or assessments and any amount theretofore paid upon an assessment which has been declared void shall be credited the owner upon the reassessment made under the provision of this section. (Apr. 24, 1896, 29 Stat. 98, ch. 123; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(46), 84 Stat. 573.)

AMENDMENT

1970—Section 155(c)(46) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–722. Valuation of United States property in the District of Columbia.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 8.—EXEMPTIONS FROM TAXATION

Sec.
47–837. American Institute of Architects Foundation.

§ 47–801. Repealed. Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 7 (c, g).

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–821 to 47–826, 47–828, 47–830.

§ 47–801a. Government property—Property of educational, charitable, religious or scientific institutions—Profits arising from sale of property.

The real property exempt from taxation in the District of Columbia shall be the following and none other:

* * * * *

(h) Buildings belonging to and operated by institutions which are not organized or operated for private gain, which are used for purposes of public charity principally in the District of Columbia. For purposes of this paragraph, any building—

(1) which is financed in whole or in part with (A) a mortgage insured under section 221 (d)(3), (h), or (i) of the National Housing Act (12 U.S.C. 1715*l*) and receiving the benefits of the interest rate provided for in the proviso in section 221(d)(5) of such Act or (B) a mortgage insured under section 237 of such Act (12 U.S.C. 1715z–2);

(2) with respect to which periodic assistance payments are made under section 235 of the National Housing Act (12 U.S.C. 1715z) or interest reduction payments are made under section 236 of such Act (12 U.S.C. 1715z–1);

(3) with respect to which rent supplement payments are made under section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s);

(4) which is financed in whole or in part with a loan made under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q);

(5) which contains dwelling units constituting low-rent housing in private accommodations within the meaning of section 23 of the United States Housing Act of 1937 (42 U.S.C. 1421b); or

(6) with respect to which there is an outstanding rehabilitation loan made under section 312 of the Housing Act of 1964 (42 U.S.C. 1452b),

shall not, so long as the mortgage or loan involved remains outstanding or the assistance involved continues to be received, be considered a building used for purposes of public charity; except that this sentence will not apply to those organizations granted an exemption under this paragraph before January 5, 1971.

* * * * *

(As amended Jan. 5, 1971, Pub. L. 91–650, title II, § 202, 84 Stat. 1932.)

CODIFICATION

In subsec. (h), the U.S. Code citations have been supplied, and the words "January 5, 1971" have been substituted for "the date of enactment of this sentence".

AMENDMENT

1971—Section 202 of act Jan. 5, 1971, Pub. L. 91–650, amended subsec. (h) by adding at the end thereof a new sentence beginning with "For purposes of this paragraph, any building—", as above set out.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(365) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (e) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 7–947, 45–722, 47–801b to 47–801f.

§ 47–801a–2. National Society of the Colonial Dames of America.

The property in the District of Columbia described as lot numbered 801, in square numbered 1285, together with the improvements thereon, known as premises number 2715 Q Street Northwest, and the furnishings therein, owned by the National Society of the Colonial Dames of America, a corporation organized and existing under the laws of the District of Columbia, shall be exempt from taxation, national and municipal, so long as the same is used for nonprofit purposes. There shall also be exempt from taxation upon the same terms and conditions the adjoining property owned by the National Society of the Colonial Dames of America, now designated on the records of the Assessor of the District of Columbia as Lots 813 and 814 in Square 1285, together with any improvements which may hereafter be erected thereon by said National Society of the Colonial Dames of America. (Sept. 7, 1949, 63 Stat. 694, ch. 564; Aug. 3, 1968, Pub. L. 90–459, § 1, 82 Stat. 634.)

AMENDMENT

1968—Section 1, act Aug. 3, 1968, Pub. L. 90–459, amended section by adding the second sentence thereto.

APPLICABILITY OF AMENDMENT

Section 2, act Aug. 3, 1968, Pub. L. 90–459, provided: "This amendment (adding the second sentence) shall apply with respect to taxable years beginning after June 30, 1968."

§ 47–801b. Income producing property of exempt institutions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45–722, 47–801a, 47–801a–1, 47–801b–1, 47–801d to 47–801f, 47–831 to 47–837.

§ 47–801c. Report as to use of exempt property.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45–722, 47–801a, 47–801a–1, 47–801b, 47–801d to 47–801f, 47–831 to 47–837.

§ 47–801d. Abatement or refund of tax assessed against exempt property.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45–722, 47–801a, 47–801b, 47–801e, 47–801f.

§ 47–801e. Appeal.

Any institution, organization, corporation, or association aggrieved by any assessment of real property deemed to be exempt from taxation under the provisions of sections 47–801a, 47–801b and 47–801c to 47–801f may appeal therefrom to the Superior Court of the District of Columbia in the same manner and to the same extent as provided in sections 47–2403 and 47–2404: *Provided, however,* That payment of the tax shall not be prerequisite to any such appeal. (Dec. 24, 1942, 56 Stat. 1091, ch. 826, § 5; July 29, 1970, Pub. L. 91–358, title I, § 156(c), 84 Stat. 573.)

AMENDMENT

1970—Section 156(c) of Act July 29, 1970, Public Law 91–358, amended section by striking out "Board of Tax Appeals for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45–722, 47–801a, 47–801a–1, 47–801b, 47–801d, 47–801f, 47–831 to 47–837.

§ 47–801f. Rules and regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(366) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45–722, 47–801a, 47–801b, 47–801d, 47–801e.

§ 47–837. American Institute of Architects Foundation.

(a) Subject to the provisions of subsection (b) of this section, the following property in the District of Columbia owned by the American Institute of Architects Foundation, Incorporated, a nonprofit corporation organized and existing under the laws of the State of New York, shall be exempt from taxation by the District of Columbia:

(1) The real property (including the improvements thereon known as the Octagon House) which is described as lot 36 in square 170.

(2) The furniture, furnishings, and other personal property located in any improvements on such real property.

(b) The property described in subsection (a) shall be exempt from taxation by the District of Columbia so long as (1) that property is owned by the Foundation referred to in subsection (a) and is used in carrying on its purposes and activities and is not used for any commercial purposes; and (2) the Octagon House is (A) maintained by that Foundation as a historical building to be preserved for its architectural and historical significance, and (B) accessible to the general public without charge or payment of a fee of any kind at such reasonable hours and under such regulations as may, from time to time, be prescribed by that Foundation. The provisions of section 47–801b shall apply with respect to the property made exempt from taxation by this section, and the

Foundation shall make the reports required by section 47–801c and shall have the appeal rights provided by section 47–801e.

(c) This section shall apply with respect to taxable years beginning after June 30, 1969. (Jan. 5, 1971, Pub. L. 91–650, title II, § 203, 84 Stat. 1933.)

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

Chapter 10.—REAL PROPERTY TAX SALES

§ 47–1001. Delinquent tax list—Publication of notice—Competitive proposals—Sale.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(367) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to fixing date of sale of real property on which taxes are levied and in arrears, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1002, 47–1003.

NOTES TO DECISIONS

Construction

A tax sale is not a government taking for which just compensation must be paid under the Constitution after judicial proceedings. *Industrial Bank of Washington* v. *T. J. Sheve et al.* (1969, 307 F. Supp. 98).

Judicial sale under Section 47–1011 which permits redemption after passage of two years but before issuance of requested tax deed is an additional method for collecting taxes which does not replace or add to administrative sale procedures. *Id.*

Where, after due notice of tax delinquency to owner by letter and to all others by publication, the property was sold at a tax sale held in the manner prescribed by District of Columbia statute, holder of deed of trust note on real estate involved did not have a constitutional or statutory right to redeem during the time between end of two-year redemption period and issuance of requested tax deed. *Id.*

§ 47–1002. Sale of property—Purchase by District.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1003.

§ 47–1003. Deposit required—Certificate of sale—Tax deed—Redemption.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1004.

NOTES TO DECISIONS

Construction

A tax sale is not a government taking for which just compensation must be paid under the Constitution after judicial proceedings. *Industrial Bank of Washington* v. *T. J. Sheve et al.* (1969, 307 F. Supp. 98).

Judicial sale under Section 47–1011 which permits redemption after passage of two years but before issuance of requested tax deed is an additional method for collecting taxes which does not replace or add to administrative sale procedures. *Id.*

Where, after due notice of tax delinquency to owner by letter and to all others by publication, the property was sold at a tax sale held in the manner prescribed by District of Columbia statute, holder of deed of trust note on real estate involved did not have a constitutional or statutory right to redeem during the time between end of two-year redemption period and issuance of requested tax deed. *Id.*

Denial of preliminary injunction

An appeal from a denial of a motion for preliminary injunction by a lienor which sought to enjoin the commissioners of District of Columbia from issuing a tax deed to a purchaser at a tax sale could not be equated with an appeal from a final disposition on the merits, notwithstanding ambiguity of the record as to whether district court had undertaken to decide the substantive question of right of the lienor to redeem prior to actual issuance of a tax deed notwithstanding expiration of the statutory two year redemption period. *Industrial Bank of Washington* v. *W. N. Tobriner et al., etc.* (1968, 405 F. 2d 1321, 132 U.S. App. D.C. 51).

§ 47–1004. Changed interest rates to apply only to sales after June 25, 1938.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1003.

§ 47–1005. Property sold for taxes redeemable within 2 years from sale.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1003.

NOTES TO DECISIONS

Denial of preliminary injunction

An appeal from a denial of a motion for preliminary injunction by a lienor which sought to enjoin the commissioners of District of Columbia from issuing a tax deed to a purchaser at a tax sale could not be equated with an appeal from a final disposition on the merits, notwithstanding ambiguity of the record as to whether district court had undertaken to decide the substantive question of right of the lienor to redeem prior to actual issuance of a tax deed notwithstanding expiration of the statutory two year redemption period. *Industrial Bank of Washington* v. *W. N. Tobriner et al., etc.* (1968, 405 F. 2d 1321, 132 U.S. App. D.C. 51).

§ 47–1006. Report of tax sale to be filed with recorder of deeds—Disposition of surplus on redemption.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1003.

§ 47–1007. Commissioners not to convey any property if sale is void.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1003.

§§ 47–1008, 47–1009.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 47–1003.

§ 47–1011. Liens on real estate for unpaid taxes—Enforcement—Redemption before sale.

Whenever any real estate in the District of Columbia has been, or shall hereafter be, offered for sale for nonpayment of taxes or assessments of any kind whatsoever, and shall have been bid off in the

name of the District of Columbia, and more than two years shall have elapsed since such property was bid off as aforesaid and the same has not been redeemed as provided by law, the Commissioners of said District may, in the name of the District aforesaid, petition the Superior Court of the District of Columbia to enforce the lien of said District for taxes or other assessments on the aforesaid property by decreeing a sale thereof; and up to the time of the sale hereinafter provided for such property may be redeemed by the owner or other person having an interest therein by the payment of all taxes or assessments due the District of Columbia upon said property and all legal penalties and costs thereon, together with such other expenses as may have been incurred by said District prior to, and as a result of, the filing of the action herein provided for. (Mar. 2, 1936, 49 Stat. 1153, ch. 111, § 1; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(47), 84 Stat. 573.)

CODIFICATION

The words "sitting in equity" have been omitted as obsolete.

AMENDMENT

1970—Section 155(c)(47) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1014.

NOTES TO DECISIONS

Construction

A tax sale is not a government taking for which just compensation must be paid under the Constitution after judicial proceedings. *Industrial Bank of Washington* v. *T. J. Sheve et al.* (1969, 307 F. Supp. 98).

Judicial sale under Section 47–1011 which permits redemption after passage of two years but before issuance of requested tax deed is an additional method for collecting taxes which does not replace or add to administrative sale procedures. *Id.*

Where, after due notice of tax delinquency to owner by letter and to all others by publication, the property was sold at a tax sale held in the manner prescribed by District of Columbia statute, holder of deed of trust note on real estate involved did not have a constitutional or statutory right to redeem during the time between end of two-year redemption period and issuance of requested tax deed. *Id.*

§ 47–1012. Real estate to be sold—Notice to owner—Parties defendant—Court order—Validity of service and sale.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1014.

§ 47–1013. Court to decree sale by collector of taxes—No penalty if defect in tax sale.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1014.

§ 47–1016. Taxes erroneously paid to be refunded.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 11.—SPECIAL ASSESSMENTS

§ 47–1101. Protest against special assessment—Hearing—Report and exceptions—Decision.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1103, 47–1104.

§ 47–1102. Abatement, reduction, or adjustment of special assessment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1103, 47–1104.

§ 47–1103. Notice of levying of special assessment—Publication—Payment of special assessment—Interest.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1001a, 47–1101, 47–1104.

§ 47–1104. Payment of special assessment after ratification—Sale for nonpayment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1103.

§ 47–1105. Assessment for removal of nuisance—Sale for nonpayment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1103, 47–1104.

§ 47–1106. Reassessment where special assessment set aside—Hearing—Agent's report of Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1103, 47–1104.

Chapter 12.—TAXATION OF PERSONAL PROPERTY

§§ 47–1201, 47–1202.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–1203, 47–1213, 47–1303, 47–1304.

§ 47–1203. Assessor to prepare printed blank forms—Mode of assessment, returns—False affidavit, penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1213, 47–1303, 47–1304.

§§ 47–1204 to 47–1206.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–1203, 47–1213, 47–1303, 47–1304.

§ 47–1207. Rate of taxation—Exceptions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1203, 47–1213, 47–1303, 47–1304, 47–1701.

§ 47–1208. Personal property exempt from taxation.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1203, 47–1207, 47–1213, 47–1303, 47–1304.

§ 47–1209. Payment of taxes—To be made semiannually—Mandamus to compel filing sworn return—Expenses.

Real-estate taxes and personal taxes of all kinds shall hereafter be payable semiannually in equal instalments in the months of September and March. If either of said instalments on real or personal property shall not be paid within the months when the same is due, said instalments shall thereupon be in arrears and delinquent, and there shall be added and collected with said tax a penalty of 1 per centum per month upon the amount thereof for the period of such delinquency, and such instalment or instalments, with the penalties thereon, shall constitute a delinquent tax to be collected in the manner now provided by law.

If any person neglects or refuses to file a return of personal property as required by law, and the assessor certifies to the Board of Commissioners that, in his opinion, the best information obtainable does not afford a satisfactory basis for assessment, the Board of Commissioners may, by petition to the Superior Court of the District of Columbia for mandamus against such person, compel the filing of a sworn return, and in such case the court shall require the person at fault to pay all expenses of the proceeding. (July 3, 1926, 44 Stat. 833, ch. 759, § 5; Feb. 18, 1929, 45 Stat. 1227, ch. 259, § 5; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; May 18, 1954, 68 Stat. 112, ch. 218, § 606; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(48), 84 Stat. 573.)

AMENDMENT

1970—Section 155(c)(48) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

MANDAMUS

Writs of mandamus abolished, see Federal Rule of Civil Procedure 81(b), 28 U.S.C. App.

CROSS REFERENCES

Payment of taxes on family dwellings, see §§ 47–901 to 47–906.

Time within which assessments may be made and collected, see § 47–1408.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1203, 47–1213, 47–1301, 47–1303, 47–1304.

§§ 47–1210, 47–1211.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–1203, 47–1213, 47–1303, 47–1304.

§ 47–1212. Mercantile establishments and carriers by water.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1203, 47–1206, 47–1213, 47–1303, 47–1304.

§ 47–1213. Repealed. July 29, 1970, Pub. L. 91–358, § 161(g), title I, 84 Stat. 582.

Section, Act of July 1, 1902, 32 Stat. 620, ch. 1352, § 6, as amended created the Board of Personal Tax Appeals and outlined its proceedings.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1203, 47–1303, 47–1304.

§ 47–1214. Clerk of Board of Personal Tax Appraisers—Appointment.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1203, 47–1213, 47–1303, 47–1304.

§ 47–1215. Taxation of rolling stock of railroad, sleeping-car, tank-car, etc., companies—Location within District—Location without District—Applicability of personal property tax laws—Effective date.

* * * * *

(e) Any individual, partnership, unincorporated association, or corporation aggrieved by any assessment of taxes made pursuant to the provisions of this section may appeal therefrom to the Superior Court of the District of Columbia in the same manner and to the same extent as set forth in sections 47–2403, 47–2404, 47–2407 to 47–2411.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 156(d), 84 Stat. 574.)

AMENDMENT

1970—Section 156(d) of Act July 29, 1970, Public Law 91–358, amended subsection (e) by striking out "Board of Tax Appeals for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 13.—ENFORCEMENT OF PERSONAL PROPERTY TAXES BY DISTRAINT OR LEVY

§ 47–1301. Distraint of property for nonpayment of taxes—Sale—Disposition of surplus.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1203, 47–1213, 47–1303, 47–1304.

§ 47–1302. Sale of distrained goods for nonpayment of taxes.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1203, 47–1213, 47–1303, 47–1304.

§ 47–1303. Penalties.

Any person or persons violating any of the provisions of sections 47–1201 to 47–1214, 47–1301 to 47–1305, and 47–1701 to 47–1709 shall be liable to a penalty of not exceeding five hundred dollars for each offense, said penalty to be imposed, upon conviction in the Superior Court of the District of Columbia, as other fines and penalties are imposed, and said court is hereby invested with jurisdiction thereof; and in default of the payment of said penalty the person or persons so convicted shall be imprisoned, in the discretion of the court, not exceeding six months. (July 1, 1902, 32 Stat. 622, ch. 1352, § 6, par. 18; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1203, 47–1213, 47–1304.

§ 47–1304. Remedies for collection of intangible tax—Common-law and equitable remedies available for collection of all taxes and assessments.

The remedies provided in sections 47–1201 to 47–1214, 47–1301 to 47–1305, 47–1701 to 47–1709 for the collection of taxes on tangible personal property, shall be available also for the collection of taxes on intangible property.

In addition to the statutory remedies, all common-law and all equitable remedies shall also be available in the Superior Court of the District of Columbia, either separately or concurrently with statutory remedies, as may be deemed advisable, for the collection of all taxes and special assessments of any kind whatsoever. (Feb. 18, 1929, 45 Stat. 1226, ch. 259, § 1; July 29, 1970, Pub. L. 91–358, title I, § 161(h)(1), 84 Stat. 582.)

AMENDMENT

1970—Section 161(h)(1) of Act July 29, 1970, Public Law 91–358 amended section by inserting after "shall be available also" in the second sentence, "in the Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1203, 47–1213, 47–1303.

§ 47–1305. Sale of real estate to satisfy personal tax.

Where real estate is levied upon for the nonpayment of personal taxes of any kind, and the best price offered at an auction sale is not sufficient to pay taxes, interest, and penalites, said real estate may be sold under decree of the Superior Court of the District of Columbia as provided by law. (Feb. 18, 1929, 45 Stat. 1226, ch. 259, § 2; July 29, 1970, Pub. L. 91–358, title I, § 161(h)(2), 84 Stat. 582.)

AMENDMENT

1970—Section 161(h)(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out "equity court" and inserting "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1203, 47–1213, 47–1303, 47–1304.

Chapter 14.—ENFORCEMENT OF PERSONAL PROPERTY TAXES BY ACQUISITION OF LIEN

Sec.
47–1401. Examinations and hearings by assessor—Examination of books—Proceedings in Superior Court.

§ 47–1401. Examinations and hearings by assessor—Examination of books—Proceedings in Superior Court.

The assessor of the District of Columbia or any person designated by him for the purpose of ascertaining the correctness of any return of personal property, tangible or intangible, for taxation or for the purpose of making a return where none has been made is authorized to examine any books, papers, records, or memoranda of any person bearing upon the matters required to be included in the return and may summon any person to appear before him and produce books, records, papers, or memoranda bearing upon the matters required to be included in the return and to give testimony or answer interrogatories under oath respecting the same, and the assessor, or assistant assessor, shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan police department. If any person, having been personally summoned, shall neglect or refuse to obey the summons issued as herein provided, then in that event the assessor, or any assistant assessor, may report that fact to the Superior Court of the District of Columbia, or one of the judges thereof, and said court or any judge thereof hereby is empowered to compel obedience to said summons to the same extent as witness may be compelled to obey the subpenas of that court. Any person in custody or control of any books, papers, records, or memoranda bearing upon the matters required to be included in such returns, who shall refuse to permit the examination by the assessor or any person designated by him of any such books, papers, records, or memoranda, or who shall obstruct or hinder the assessor or any person designated by him in the examination of any books, papers, records, or memoranda, shall upon conviction thereof be fined not more than $300. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the corporation counsel of the District of Columbia in the name of the District of Columbia. (Aug. 17, 1937, 50 Stat. 673, ch. 690, title I, § 1; May 16, 1938, 52 Stat. 356, ch. 223, § 1; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; June 25, 1948, 62 Stat.

991, ch. 646, § 32(a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), (c)(49)(A), 84 Stat. 570, 573.)

AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

Section 155(c)(49)(A) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CROSS REFERENCES

Collection of income taxes, applicability of chapter, see § 47–1527.

Enforcement of personal property taxes by distraint or levy, see § 47–1301 et seq.

§ 47–1402. Neglect or refusal to pay personal property taxes—Collection by distraint—Levy—Public notice of intended sale—Sale to be public—Report—Disposition of surplus above taxes.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–1405. Exhibition of evidence or statements relating to subject of distraint—Penalty.

All persons and officers of companies and corporations are required, on demand of the collector, or the person designated by him, about to distrain or having distrained on any property or rights of property, to exhibit all books containing evidence or statements relating to the subject of distraint or the property or rights of property liable to distraint for the tax due. A violation of this section shall be punished by a fine of not exceeding $500 or by imprisonment not exceeding thirty days, or both, in a prosecution filed in the Superior Court of the District of Columbia by the corporation counsel of the District in the name of the District of Columbia. (Aug. 17, 1937, 50 Stat. 674, ch. 690, title I, § 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 47–1406. Certificates of delinquent personal tax—Filing—Lien—Enforcement.

In case of the neglect or refusal of any person to pay a personal-property tax within ten days after notice and demand, the collector of taxes, or the person designated by him, may file a certificate of such delinquent personal tax with the Recorder of Deeds of the District of Columbia, which certificate from the date of its filing shall have the force and effect, as against the delinquent person named in such certificate, of the lien created by a judgment granted by the Superior Court of the District of Columbia, which lien shall remain in force and effect until the taxes set forth in said certificate, with interest and penalties thereon, shall be paid and said lien may be enforced by the Superior Court of the District of Columbia. (Aug. 17, 1937, 50 Stat. 674, ch. 690, title I, § 6; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 5, 1966, 80 Stat. 266, Pub. L. 89–493, § 18; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(49)(B), 84 Stat. 573.)

CODIFICATION

The words "a bill in equity filed in" have been omitted as obsolete.

AMENDMENT

1970—Section 155(c)(49)(B) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 47–1410. Failure to file return—Penalty.

Any person required to file a return or schedule, by the terms of an Act entitled "An Act making appropriation to provide for the expenses of the government of the District of Columbia for the fiscal year ending June 30, 1903, and for other purposes," approved July 1, 1902, as amended, who shall fail or refuse to file the same within the time required by said Act as amended shall, upon conviction thereof, be fined not more than $300 for each and every failure or refusal and each and every day that such failure or refusal continues shall constitute a separate and distinct offense. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the corporation counsel of the District of Columbia in the name of the District of Columbia. The penalty herein provided shall be in addition to the other penalties provided in said Act of July 1, 1902, as amended. (Aug. 17, 1937, ch. 690, title I, § 10, as added May 16, 1938, 52 Stat. 357, ch. 223, § 1(c), and amended Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

REFERENCES IN TEXT

The Act of July 1, 1902, as amended, referred to in the text, appears in this code as §§ 1–237, 7–211, 7–507, 11–206, 22–702, 22–1208, 26–318, 28–2701, 35–105, 43–1105, 47–119, 47–121, 47–211, 47–604, 47–605, 47–709, 47–801, 47–802, 47–1001 to 47–1009, 47–1201, 47–1203, 47–1207 to 47–1209, 47–1212 to 47–1214, 47–1301 to 47–1303, 47–1701 to 47–1704, 47–1706 to 47–1709, 47–2301 to 47–2350.

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1412.

§ 47–1412. Secrecy of returns.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 15.—INCOME AND FRANCHISE TAXES

SUBCHAPTER II.—INCOME AND FRANCHISE TAXES FOR TAXABLE YEARS AFTER JANUARY 1, 1947

TITLE VI—TAX ON RESIDENTS AND NONRESIDENTS

Sec.
47–1567e. Credit for sales tax paid.

TITLE XI—BASIS

47–1583a. Computation of gain or loss.
47–1583b. Repealed.
47–1583d. Repealed.

TITLE XII—ASSESSMENT AND COLLECTION; TIME OF PAYMENT

47–1586*l*–1. Declarations of estimated tax by corporations and unincorporated businesses—Failure by corporation or unincorporated business to pay estimated tax—Overpayment; credit of tax.

TITLE XV—APPEAL

47–1593. Appeal to the Superior Court of the District of Columbia.

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 21–311.

SUBCHAPTER I.—INCOME TAX FOR TAXABLE YEARS PRIOR TO JANUARY 1, 1947

§§ 47–1501 to 47–1503.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1504. Gross income and exclusions therefrom.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1505. Deductions from gross income.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1524, 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§§ 47–1506 to 47–1508.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1509. Personal exemptions and credit for dependents.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1502, 47–1524, 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1510. Accounting periods.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1511, 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§§ 47–1511 to 47–1518.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1519. Extension of time for filing returns.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1526, 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§§ 47–1520 to 47–1522.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1523. Fiduciary returns.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1515, 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§§ 47–1524, 47–1525.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1526. Time of payment of tax—Extension—Advance payments—Fractional part of cent—Collector.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1541, 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§§ 47–1527, 47–1528.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1529. Assessor to administer.

* * * * *

(c) *Examination of books and witnesses.*—The assessor, for the purpose of ascertaining the correctness of any return filed hereunder, or for the purpose of making an estimate of the taxable income of any taxpayer, is authorized to examine any books, papers, records, or memoranda of any person bearing upon the matters required to be included in the return and may summon any person to appear and produce books, records, papers, or memoranda bearing upon the matters required to be included in the return, and to give testimony or answer interrogatories under oath respecting the same, and the assessor shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police Department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then, and in that event, the assessor may report that fact to the Superior Court of the District of Columbia, or one of the judges thereof, and said court or any judge thereof hereby is empowered to compel obedience to such summons to the same extent as witnesses may be compelled to obey the subpenas of that court. Any person in custody or control of any books, papers, records, or memoranda bearing upon the matters required to be included in such returns, who shall refuse to permit the examination by the assessor or any person designated by him of any such books, papers, records, or memoranda, or who shall obstruct or hinder the assessor or any person designated by him in the examination of any books, papers, records, or memoranda, shall upon conviction thereof be fined not more than $300. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the corporation counsel

of the District of Columbia in the name of the District of Columbia.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 155(a), (c)(50), 84 Stat. 570, 573.)

AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (c) by striking out "Municipal Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

Section 155(c)(50) of Act July 29, 1970, Public Law 91–358, amended subsec. (c) by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1530. Definition of "deficiency."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1531. Determination and assessment of deficiency—Protest—Appeal.

If a deficiency in tax is determined by the assessor, the taxpayer shall be notified thereof and given a period of not less than thirty days, after such notice is sent by registered mail, in which to file a protest and show cause or reason why the deficiency should not be paid. Opportunity for hearing shall be granted by the assessor, and a final decision thereon shall be made as quickly as practicable. Any deficiency in tax then determined to be due shall be assessed and paid, together with any addition to the tax applicable thereto, within ten days after notice and demand by the collector. The taxpayer may appeal from such assessment to the Superior Court of the District of Columbia in the same manner and to the same extent as set forth in sections 47–2403, 47–2404, 47–2407 to 47–2412. (July 26, 1939, 53 Stat. 1101, ch. 367, title II, § 31; July 29, 1970, Pub. L. 91–358, title I, § 156(e), 84 Stat. 574.)

AMENDMENT

1970—Section 156(e) of Act July 29, 1970, Public Law 91–358, amended section by striking out "Board of Tax Appeals for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1534, 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§§ 47–1532, 47–1533.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1534. Refunds.

Except as otherwise provided in section 47–1531, where there has been an overpayment of any tax imposed by this subchapter, the amount of such overpayment shall be refunded to the taxpayer. No such refund shall be allowed after two years from the time the tax is paid unless before the expiration of such period a claim therefor is filed by the taxpayer. The amount of the refund shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim, or, if no claim was filed, then during the two years immediately preceding the allowance of the refund. Every claim for refund must be in writing, under oath; must state the specific grounds upon which the claim is founded, and must be filed with the assessor. If the assessor disallows any part of a claim for refunds, he shall send to the taxpayer by registered mail a notice of the part of the claim so disallowed. Within six months after the mailing of such notice, the taxpayer may file an appeal with the Superior Court of the District of Columbia, in the same manner and to the same extent as set forth in sections 47–2403, 47–2404, 47–2407 to 47–2412. (July 26, 1939, 53 Stat. 1103, ch. 367, title II, § 34; July 29, 1970, Pub. L. 91–358, title I, §§ 156(e), 161(b)(c), 84 Stat, 574, 581.)

AMENDMENTS

1970—Section 156(e) of Act July 29, 1970, Public Law 91–358, amended section by striking out "Board of Tax Appeals for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

Section 161(b)(c) of Act July 29, 1970, Public Law 91–358 amended section by striking out the last sentence and by striking out "ninety days" and inserting "six months". For provisions of section, see 1967 ed. of code.

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1535. Closing agreements.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1536. Compromise—Concealment of assets—Penalties.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§§ 47–1537 to 47–1539.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–1540, 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1540. Additions to the tax in case of nonpayment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1541. Time extended for payment of tax shown on return.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1540, 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1542. Penalties—"Person" defined.

(a) *Negligence.*—Any person required under this subchapter to pay any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply information, who fails to pay such tax, to make such return, to keep such records, or supply such information, at the time or times required by law or regulations, or who makes a false or fraudulent return, shall, upon conviction thereof (in addition to other penalties provided by law), be fined not more than $300 for each and every such failure or violation, and each and every day that such failure continues shall constitute a separate and distinct offense. All prosecutions under this subsection shall be brought in the Superior Court of the District of Columbia on information by the corporation counsel or one of his assistants in the name of the District.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (a) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1543. Definitions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1510, 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1544. Information returns.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1545. Withholding of tax at source.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1546. Licenses—Corporations liable—Duration—Posting—Revocation—Renewal—Penalties—"Business" defined.

* * * * *

(g) Any corporation receiving income from District sources or engaging in or carrying on any business in the District without first having obtained a license so to do, and any person engaging in or carrying on any business for or receiving income from District sources on behalf of a corporation not having a license so to do, shall, upon conviction thereof, be fined not more than $300 for each and every failure, refusal, or violation, and each and every day that such failure, refusal, or violation continues shall constitute a separate and distinct offense. All prosecutions under this subsection shall be brought in the Superior Court of the District of Columbia on information by the corporation counsel or any of his assistants in the name of the District: *Provided, however,* That the provisions of this section shall not apply to mere collection by an agent of income of a corporation not having the license required hereby.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970–Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (g) by striking out "Municipal Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

REPEAL

Section repealed with respect to taxable years or portions thereof beginning on and after January 1, 1947, see note preceding § 47–1501.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

§ 47–1547. Compensation for services rendered for a period of five years or more.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1551, 47–1551b, 47–1583, 47–1591, 47–2413.

SUBCHAPTER II.—INCOME AND FRANCHISE TAXES FOR TAXABLE YEARS AFTER JANUARY 1, 1947

SUBCHAPTER REFERRED TO IN U.S. CODE

This subchapter is referred to in section 5516 of title 5, U.S. Code.

TITLE I.—REPEAL OF PRIOR INCOME TAX LAW AND APPLICABILITY OF SUBCHAPTER; GENERAL DEFINITIONS

§ 47–1551. Repeal of sections 47–1501 to 47–1547 and retention of certain provisions thereof.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1580, 47–1589e, 47–1591, 47–2413.

NOTES TO DECISIONS

Domicile as a prerequisite to tax liability

District of Columbia Income and Franchise Tax Act did not by its terms subject to tax income earned in the first three months of year by person who was domiciled in another state and then moved to the District in which he became a domicile and resident thereof for the remaining nine months of the year and who paid tax to District on

income earned for nine months in which he was a domicile. *District of Columbia* v. *P. S. Davis* (1967, 371 F. 2d 964, 125 U.S. App. D.C. 311).

§§ 47–1551a, 47–1551b.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 47–1580.

§ 47–1551c. General definitions.

* * * * *

(*l*) (1) The term "capital asset" means property defined or treated as a capital asset under the Internal Revenue Code of 1954.

(2) For the purpose of computing for any taxable year the tax imposed under this article with respect to sales or other dispositions of property referred to in subparagraph (1), the provisions of the Internal Revenue Code of 1954 relating to the treatment of gains and losses (other than the alternative tax imposed by section 1201 of such Code) shall apply.

(m) The word "dividend" means any distribution made by a corporation (domestic or foreign) to its stockholders or members, out of its earnings, profits, or surplus (other than paid-in surplus), whenever earned by the corporation and whether made in cash or any other property (other than stock of the same class in the corporation if the recipient of such stock dividend has neither received nor exercised an option to receive such dividend in cash or in property other than stock instead of stock) and whether distributed prior to, during, upon, or after liquidation or dissolution of the corporation, except that in the case of any such distribution any part of which for purposes of the income tax imposed under the Internal Revenue Code of 1954 is deemed to constitute a capital gain, such part shall be deemed to constitute a capital gain for purposes of the tax imposed by this subchapter: *Provided, however,* That in the case of any dividend which is distributed other than in cash or stock in the same class in the corporation and not exempted from tax under this subchapter, the basis of tax to the recipient thereof shall be the market value of such property at the time of such distribution: *And provided, however,* That the word "dividend" shall not include any dividend paid by a mutual life insurance company to its shareholders.

* * * * *

(aa) Repealed, by act Oct. 31, 1969, Pub. L. 91–106, § 601(a)

* * * * *

(As amended, Oct. 31, 1969, Pub. L. 91–106, title VI, § 601(a), 83 Stat. 176.)

REFERENCES IN TEXT

The section of the Internal Revenue Code of 1954 referred to in subsections (w), (x), (y) are classified to 26 U.S.C. 3401 (a), (b), and (d).

AMENDMENTS

1969—Act Oct. 31, 1969, Pub. L. 91–106, § 601(a) amended this section as follows:

(1) Amended subsection (*l*) to read as above set out. Prior to this amendment the subsection read as follows: "(*l*) The words 'capital assets' mean any property, whether real or personal, tangible or intangible, held by the taxpayer for more than two years (whether or not connected with his trade or business), but do not include stock in trade of the taxpayer or other property of a kind which would properly be included in the inventory of the taxpayer if on hand at the end of the taxable year, or property held by the taxpayer primarily for sale to customers in the ordinary course of his trade or business."

(2) Amended subsection (m) by inserting before the colon preceding the first proviso, the exception clause relating to capital gains.

(3) Repealed, subsection (aa). This subsection read as follows: "(aa) Notwithstanding subsection (m) of this section, any distribution in liquidation of a regulated public utility (as defined in section 7701(a)(33)(A)(iii) of the Internal Revenue Code of 1954) which, for purposes of the Internal Revenue Code of 1954, is treated as in part or full payment in exchange for the stock in such utility, shall, if for purposes of this article the stock is a capital asset, be treated as in part or full payment in exchange for the stock."

EFFECTIVE DATES AND CONSTRUCTION OF 1969 AMENDMENTS

Section 606, of Pub. L. 91–106, provided: "The amendments made by sections 601 [amending sections 47–1551c, 47–1557a, 47–1557b, 47–1583, 47–1583a, 47–1583b, 47–1583d, 47–1583e], 602 [amending section 47–1557a], and 604(a) [amending sections 47–1571a and 47–1574b] of this title shall apply with respect to taxable years beginning after December 31, 1968. The amendments made by sections 603 and 605 [amending sections 47–1586 m and n, adding 47–1586l–1 and 47–1567e] of this title shall be effective with respect to taxable years beginning after December 31, 1969. The amendments made by section 604(b) [amending sections 47–1591 and 47–1591f] of this title shall apply with respect to calendar years beginning after December 31, 1969."

Section 607 of Pub. L. 91–106, provided: "Nothing in the amendments made by this title [for classification of amendments made by 'this title' (title VI of Pub. L. 91–106) see enumerations of sections in section 606 above] shall be construed to have the effect—(1) of increasing or decreasing the amount of District of Columbia income or franchise tax determined for any taxable year beginning before January 1, 1969, or (2) of authorizing or requiring in the determination of District of Columbia income or franchise tax for any taxable year beginning after December 31, 1968, the inclusion in gross income of any gain, or the deduction from gross income of any loss, from the sale or other disposition in a taxable year beginning before January 1, 1969, of any property."

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this Act) may be cited as the 'District of Columbia Revenue Act of 1969'."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1561, 47–1580, 47–1583d.

SECTION REFERRED TO IN U.S. CODE

This section is referred to in title 5 section 5516 of the U.S. Code.

NOTES TO DECISIONS

Capital assets

Liquidating shares distributed to shareholders and held by them for three days before sale to others are not a capital asset in hands of shareholders and gains on sale of shares cannot be given capital gains treatment. *J. H. Verkouteren* v. *District of Columbia* (1970, 433 F. 2d 461, — U.S. App. D.C. —).

Assets demand independent tax treatment, perhaps differing treatment, according to whether they belong to a corporation, ongoing or dissolved, or to its shareholders. *Id.*

Neither the period a corporation holds distributed property nor the period a stockholder holds his stock in distributing corporation is the criterion in District of Columbia for measuring duration of stockholder's ownership to ascertain whether for him it is a capital asset but it is instead the period the stockholder holds distributed property that is determinative. *Id.*

Since findings clearly established that good will of an acquired company was a capital asset held more than two years, gain from sale of such capital asset was exempt from franchise tax. *A.C.F. Industries, Incorporated* v. *District of Columbia* (1967, 382 F. 2d 463, 127 U.S. App. D.C. 247).

Capital gains

The District of Columbia capital gain exclusion is generous as to taxpayers and public interest argues against enlarging it. *J. H. Verkouteren* v. *District of Columbia* (1970, 433 F. 2d 461, — U.S. App. D.C. —).

Constitutionality

The taxation of a liquidating dividend representing earnings realized by a corporation prior to the effective date of first District of Columbia income tax did not violate the due process clause of Fifth Amendment on the theory that imposition of income tax constituted retroactive taxation. *American Security and Trust Company, Surviving Trustee etc.* v. *District of Columbia* (1969, 408 F. 2d 1295, 133 U.S. App. D.C. 92).

Dividends

To the extent that a corporation's liquidating shares represent its earned surplus, they are properly considered under this section to be dividends constituting gross income to recipient shareholders. *J. H. Verkouteren* v. *District of Columbia* (1970, 433 F. 2d 461, — U.S. App. D.C. —).

Stockholders' gain on the sale of liquidating shares which they had held for three days before sale is stockholders' share of sale price of stock less the cost to them of stock they sold. *Id.*

The cost of liquidating shares to shareholders who held the shares for three days before sale to others is the amount of dividend attributed to shareholders in regard to the stock equalling earned surplus and shareholders' gain on sale would be determined using that portion as cost. *Id.*

Pursuant to a section of the District of Columbia Code defining "dividend" as any distribution to stockholders whenever earned by the corporation, distributions of corporate earnings accumulated prior to date of the first District of Columbia income tax are taxable. *American Security and Trust Company, Surviving Trustee etc.* v. *District of Columbia* (1969, 408 F. 2d 1295, 133 U.S. App. D.C. 92).

Nontaxable capital gain

A transaction whereby taxpayer, who owned apartment house corporation, sold his stock in the corporation to purchasers who dissolved the corporation and gave taxpayer an installment note secured by a trust deed on the apartment house resulted in nontaxable capital gain, although there might have been different tax consequences had corporation sold real estate and paid liquidating dividend to taxpayer. *District of Columbia* v. *L. Neyman* (1969, 417 A. 2d 1140, 135 U.S. App. D.C. 193).

§§ 47–1552, 47–1553.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–1589e, 47–1591, 47–2413.

TITLE II.—EXEMPT ORGANIZATIONS

§ 47–1554. Exempt organizations.

TAX EXEMPTION OF INTERNATIONAL TELECOMMUNICATIONS SATELLITE CONSORTIUM

The act of Oct. 22, 1970, Pub. L. 91–494, provided as follows:

This Act shall apply to the International Telecommunications Satellite Consortium, and any successor organization thereto, in which the United States through its designated entity participates pursuant to the Communications Satellite Act of 1962 (47 U.S.C. 701 and following).

SEC. 2. The International Telecommunications Satellite Consortium, and any successor organization thereto, its property, income, operations and other transactions, and the participants therein other than the designated United States entity, shall be exempt from all taxes imposed by the District of Columbia and shall not be required to obtain any license required by the District of Columbia Income and Franchise Tax Act of 1947, as the same hereafter may be amended: *Provided, however,* That this exemption shall not apply to any property which shall not be used for the purposes of said Consortium or successor organization, or to any income, operations, or other transactions which shall not be related to the purposes of said Consortium or successor organization.

SEC. 3. The District of Columbia Council is authorized to promulgate regulations to carry out the purpose of this Act.

SEC. 4. This Act shall be effective with respect to taxable years beginning after December 31, 1964.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1571a, 47–1574b, 47–1589e, 47–1591, 47–2413.

TITLE III.—NET INCOME, GROSS INCOME AND EXCLUSIONS THEREFROM, AND DEDUCTIONS

§ 47–1557. Net income.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1589e, 47–1591, 47–2413.

§ 47–1557a. Gross income and exclusions therefrom.

(a) The words "gross income" include gains, profits, and income derived from salaries, wages, or compensation for personal services of whatever kind and in whatever form paid, including salaries, wages, and compensation paid by the United States to its officers and employees to the extent the same is not exempt under this subchapter, or income derived from any trade or business or sales or dealings in property, whether real or personal, including capital assets as defined in this subchapter, growing out of the ownership, or sale of, or interest in, such property; also from rent, royalties, interest, dividends, securities, or transactions of any trade or business carried on for gain or profit, or gains or profits, and income derived from any source whatever.

* * * * *

(b) The words "gross income" shall not include the following:

* * * * *

(5) *Compensation for Injuries or Sickness.*—To the extent not otherwise specifically excluded from gross income under this subchapter, amounts excluded from gross income under sections 104 and 105 of the Internal Revenue Code of 1954.

* * * * *

(11) Repealed, by act Oct. 31, 1969, Pub. L. 91–106, § 601(b)(2).

* * * * *

(As amended, Oct. 31, 1969, Pub. L. 91–106, title VI, §§ 601(b)(1)(2), 602, 83 Stat. 176, 177.)

AMENDMENTS

1969—Act Oct. 31, 1969, Pub. L. 91–106, § 601(b)(1)(2), amended subsection (a) by striking out "other than capital assets" and inserting "including capital assets" and repealing par. 11 of subsection (b) which provided:

"(11) Capital gains.—Gains from the sale or exchange of any capital assets as defined in this subchapter."

Section 602 of the same act amended subsection (b) (5) to read as above set out. The former provisions of (b) (5) are as follows:

"(5) *Compensation for injuries or sickness.*—Amounts received, through accident or health insurance or under workmen's compensation or employer's liability acts, or by way of damages for personal injuries, whether by suit or agreement."

EFFECTIVE DATES AND CONSTRUCTION OF 1969 AMENDMENTS

See secs. 606 and 607 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–1551c.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this Act) may be cited as the 'District of Columbia Revenue Act of 1969'."

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(368) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (b) (17) in the particulars described in par. 368, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

(Note. Par. 368 of section 402 of the Plan, refers to section 47–1577a(b) (17). On the assumption that this is a typographical error, this note is set out under this section.)

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 29–933, 47–1577i, 47–1580.

NOTES TO DECISIONS

Capital assets

Liquidating shares distributed to shareholders and held by them for three days before sale to others are not a capital asset in hands of shareholders and gains on sale of shares cannot be given capital gains treatment. *J. H. Verkouteren v. District of Columbia* (1970, 433 F. 2d 461, — U.S. App. D.C. —).

Assets demand independent tax treatment, perhaps differing treatment, according to whether they belong to a corporation, ongoing or dissolved, or to its shareholders. *Id.*

Neither the period a corporation holds distributed property nor the period a stockholder holds his stock in distributing corporation is the criterion in District of Columbia for measuring duration of stockholder's ownership to ascertain whether for him it is a capital asset but it is instead the period the stockholder holds distributed property that is determinative. *Id.*

Since findings clearly established that good will of an acquired company was a capital asset held more than two years, gain from sale of such capital asset was exempt from franchise tax. *A.C.F. Industries, Incorporated* v. *District of Columbia* (1967, 382 F. 2d 463, 127 U.S. App. D.C. 247).

Capital gains

Liquidating shares distributed to shareholders and held by them for three days before sale to others are not a capital asset in hands of shareholders and gains on sale of shares cannot be given capital gains treatme t. *J. H. Verkouteren* v. *District of Columbia* (1970, 433 F. 2d 461, — U.S. App. D.C. —).

The District of Columbia capital gain exclusion is generous as to taxpayers and public interest argues against enlarging it. *Id.*

Domicile as a prerequisite to tax liability

District of Columbia Income and Franchise Tax Act did not by its terms subject to tax income earned in the first three months of year by person who was domiciled in another state and then moved to the District in which he became a domicile and resident thereof for the remaining nine months of the year and who paid tax to District on income earned for nine months in which he was a domicile. *District of Columbia* v. *P. S. Davis* (1967, 371 F. 2d 964, 125 U.S. App. D.C. 311).

Nontaxable capital gain

A transaction whereby taxpayer, who owned apartment house corporation, sold his stock in the corporation to purchasers who dissolved the corporation and gave taxpayer an installment note secured by trust deed on the apartment house resulted in nontaxable capital gain, although there might have been different tax consequences had corporation sold real estate and paid liquidating dividend to taxpayer. *District of Columbia* v. *L. Neyman* (1969, 417 A. 2d 1140, 135 U.S. App. D.C. 193).

§ 47–1557b. Deductions.

(a) Deductions allowed.—

* * * * *

(4) *Losses.*—Losses sustained during the taxable year and not compensated for by insurance or otherwise—

(A) if incurred in a trade or business; or

(B) if incurred in any transaction entered into for the production or collection of income subject to tax under this subchapter, or for the management, conservation, or maintenance of property held for the production of income subject to tax under this subchapter, though not connected with any trade or business; or

(C) of property not connected with a trade or business, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft, except that in the case of an individual, a loss described in this subparagraph shall be allowed only to the extent that the amount of loss to such individual arising from each casualty, or from each theft, exceeds $100.

For purposes of the $100 limitation of subparagraph (C), a husband and wife making a joint return for the taxable year in which the loss is allowed as a deduction shall be treated as one individual. No loss described in this paragraph shall be allowed if, at the time of filing the return, such loss has been claimed for inheritance or estate tax purposes.

* * * * *

(7) *Depreciation.*—A reasonable allowance for exhaustion, wear, and tear of property used in the trade or business, including a reasonable allowance for obsolescence; and including in the case of natural resources allowances for depletion as permitted by reasonable rules and regulations which the Commissioners are hereby authorized to promulgate. The basis upon which such allowances are to be computed is the basis provided for in section 47–1583e. In the case of property held by any taxpayer on the first day of his first taxable year beginning after December 31, 1968, which, on such first day, was property described in this paragraph, any reduction in the basis of such property for purposes of computing the allowance under this paragraph which resulted from the enactment of the District of Columbia Revenue Act of 1969 shall be treated as an additional depreciation deduction which shall (subject to paragraph (14)) be allowable under this paragraph ratably over such period (beginning not earlier than the first taxable year of

the taxpayer which begins after December 31, 1968), not to exceed ten taxable years, as may be agreed upon by the taxpayer and the Commissioner.

* * * * *

(16) *Regulated Investment Companies.*—In the case of a regulated investment company as defined in section 851 of the Internal Revenue Code of 1954, which meets the requirements of section 852(a) of the Internal Revenue Code of 1954—

(A) the dividends paid by the regulated investment company which qualify for the dividends-paid deduction under section 852(b)(2)(D) and 852 (b)(3)(A)(ii) of the Internal Revenue Code of 1954, including dividends considered as having been paid during the taxable year by reason of section 855 of the Internal Revenue Code of 1954; and

(B) such amount as the regulated investment company shall designate for purposes of section 852(b)(3)(D)(ii) of the Internal Revenue Code of 1954 as undistributed long-term capital gains to be included in computing the long-term capital gains of the shareholder. Such amounts shall be included as gains from the sale or exchange of capital assets, as defined in this article, in computing such shareholder's taxable income as defined in section 47–1567.

(16) *Real estate investment trusts.*—In the case of a real estate invesment trust as defined in section 856 of the Internal Revenue Code of 1954, which meets the requirements of section 857(a) of the Internal Revenue Code of 1954, the dividends paid by the real estate investment trust which qualify for the dividends-paid deduction under section 857(b)(2)(C) and section 857(b)(3)(A)(ii) of the Internal Revenue Code of 1954, including dividends considered as having been paid during the taxable year by reason of section 858 of the Internal Revenue Code of 1954.

(b) Deductions not allowed.—

* * * * *

(6) Repealed. Oct. 31, 1969, Pub. L. 91–106, § 601(b)(4).

(As amended Oct. 31, 1969, Pub. L. 91–106, title VI, § 601(b)(3)(4), 83 Stat. 177; Aug. 28, 1970, Pub. L. 91–391, § 1, 84 Stat. 834; Jan. 5, 1971, Pub. L. 91–650, title II, §§ 204, 205(a), 84 Stat. 1933.)

REFERENCE IN TEXT

The District of Columbia Revenue Act of 1969, referred to in subsec. (a)(7), is the act of Oct. 31, 1969, Pub. L. 91–106. For classification of that act into this Code, see Parallel Reference Tables.

AMENDMENTS

1971—Section 205(a) of act Jan. 5, 1971, Pub. L. 91–650, amended subsec. (a) by inserting a second par. (16), relating to real estate investment trusts, as above set out.

Section 204 of act Jan. 5, 1971, Pub. L. 91–650, amended subsec. (a)(7) by inserting at the end thereof a new sentence to read as above set out.

1970—Act Aug. 28, 1970, Pub. L. 91–391, § 1, amended subsec. (a) by inserting a new par. (16), relating to regulated investment companies, as above set out.

1969—Act Oct. 31, 1969. Pub. L. 91–106, § 601(3)(4), amended sections as follows:

(1) Subsection (a) by striking out (4)(C) and inserting a new par. (4)(C) as above set out. The prior provisions of (4)(C) read as follows:

"(C) of property not connected with a trade or business; if such losses arise from fires, storms, shipwrecks, thefts, or other casualty: *Provided, however,* That no such loss shall be allowed as a deduction under this subsection if such loss is claimed as a deduction for inheritance- or estate-tax purposes: *And provided further,* That this subsection shall not be construed to permit the deduction of a loss of any capital asset as defined in this subchapter."

(2) Repealed subsection(b(6) which provided:

"(6) *Capital losses.*—Losses from the sale or exchange of any capital asset as defined in this subchapter."

EFFECTIVE DATE OF 1971 AMENDMENT

Section 205(b) of act Jan. 5, 1971, Pub. L. 91–650, provided: "The amendment made by subsection (a) [adding par. (16) relating to real estate investment trusts] shall apply with respect to taxable years of real estate investment trusts beginning after December 31, 1970."

EFFECTIVE DATE OF 1970 AMENDMENT

Section 2 of Pub. L. 91–391 provided: "The amendments made by this Act [adding par. 16 relating to regulated investment companies] shall apply with respect to taxable years of regulated investmnt companies beginning after December 31, 1968."

EFFECTIVE DATES AND CONSTRUCTION OF 1969 AMENDMENTS

See secs. 606 and 607 of act Oct. 31, 1969, Pub. L. 91–106 set out as a note under § 47–1551c.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this Act) may be cited as the 'District of Columbia Revenue Act of 1969'."

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(369) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a)(7) in the particulars described in par. 369, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1557a, 47–1567b, 47–1577d, 47–1577g, 47–1583e.

NOTES TO DECISIONS

Capital assets

Liquidating shares distributed to shareholders and held by them for three days before sale to others are not a capital asset in hands of shareholders and gains on sale of shares cannot be given capital gains treatment. *J. H. Verkouteren* v. *District of Columbia* (1970, 433 F. 2d 461, — U.S. App. D.C. —).

Assets demand independent tax treatment, perhaps differing treatment, according to whether they belong to a corporation, ongoing or dissolved, or to its shareholders. *Id.*

Neither the period a corporation holds distributed property nor the period a stockholder holds his stock in distributing corporation is the criterion in District of Columbia for measuring duration of stockholder's ownership to ascertain whether for him it is a capital asset but it is instead the period the stockholder holds distributed property that is determinative. *Id.*

Capital gains

The District of Columbia capital gain exclusion is generous as to taxpayers and public interest argues against enlarging it. *J. H. Verkouteren* v. *District of Columbia* (1970, 433 F. 2d 461, — U.S. App. D.C. —).

§§ 47–1558 to 47–1560.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–1589e, 47–1591, 47–2413.

TITLE IV.—ACCOUNTING PERIODS, INSTALLMENT SALES, AND INVENTORIES

§ 47–1561. Accounting periods.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1561a, 47–1589e, 47–1591, 47–2413.

§§ 47–1562, 47–1563.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–1589e, 47–1591, 47–2413.

TITLE V.—RETURNS

§ 47–1564. Form of returns and duty to file.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1564b, 47–1564c, 47–1567e, 47–1589e, 47–1591, 47–2413.

§ 47–1564a. Requirement—Who must file.

NOTES TO DECISIONS

Domicile as a prerequisite to tax liability

District of Columbia Income and Franchise Tax Act did not by its terms subject to tax income earned in the first three months of year by person who was domiciled in another state and then moved to the District in which he became a domicile and resident thereof for the remaining nine months of the year and who paid tax to District on income earned for nine months in which he was a domicile. *District of Columbia* v. *P. S. Davis* (1967, 371 F. 2d 964, 125 U.S. App. D.C. 311).

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1564b, 47–1567e.

§ 47–1564b. Filing of returns.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1567e, 47–1586f, 47–1586*l*–1.

§ 47–1564c. Divulging of information.

* * * * *

(e) Penalties for violation of this section.—Any violation of the provisions of this section shall be a misdemeanor and shall be punishable by a fine not exceeding $1,000 or imprisonment for six months, or both, in the discretion of the court. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (e) by striking out "Municipal Court of the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1567e, 47–1586g.

TITLE VI.—TAX ON RESIDENTS AND NONRESIDENTS

§ 47–1567. Definitions.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1557b, 47–1574e, 47–1577b, 47–1589e, 47–1591, 47–2413.

NOTES TO DECISIONS

Domicile as a prerequisite to tax liability

District of Columbia Income and Franchise Tax Act did not by its terms subject to tax income earned in the first three months of year by person who was domiciled in another state and then moved to the District in which he became a domicile and resident thereof for the remaining nine months of the year and who paid tax to District on income earned for nine months in which he was a domicile. *District of Columbia* v. *P. S. Davis* (1967, 371 F. 2d 964, 125 U.S. App. D.C. 311).

§ 47–1567a. Personal exemptions and credit for dependents.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1567, 47–1567e, 47–1577b, 47–1577d.

NOTES TO DECISIONS

Domicile as a prerequisite to tax liability

District of Columbia Income and Franchise Tax Act did not by its terms subject to tax income earned in the first three months of year by person who was domiciled in another state and then moved to the District in which he became a domicile and resident thereof for the remaining nine months of the year and who paid tax to District on income earned for nine months in which he was a domicile. *District of Columbia* v. *P. S. Davis* (1967, 371 F. 2d 964, 125 U.S. App. D.C. 311).

§ 47–1567b. Imposition and rates of tax—Optional method of computation.

(a) In the case of a taxable year beginning after December 31, 1969, there is hereby imposed on the taxable income of every resident a tax determined in accordance with the following table:

If the taxable income is	*The tax is*
Not over $1,000	2% of the taxable income.
Over $1,000 but not over $2,000.	$20, plus 3% of excess over $1,000.
Over $2,000 but not over $3,000.	$50, plus 4% of excess over $2,000.
Over $3,000 but not over $5,000.	$90, plus 5% of excess over $3,000.
Over $5,000 but not over $8,000.	$190, plus 6% of excess over $5,000.
Over $8,000 but not over $12,000.	$370, plus 7% of excess over $8,000.
Over $12,000 but not over $17,000.	$650, plus 8% of excess over $12,000.
Over $17,000 but not over $25,000.	$1,050, plus 9% of excess over $17,000.
Over $25,000	$1,770, plus 10% of excess over $25,000.

(b) * * *

(As amended Aug. 2, 1968, Pub. L. 90–450, title II, § 201, 82 Stat. 612; June 30, 1970, Pub. L. 91–297, title IV, § 401, 84 Stat. 366.)

AMENDMENTS

1970—Subsec. (a). Section 401 of Pub. L. 91–297 amended the subsection to read as above set out. The amendment rearranged the bracket structure of the table of taxable income and the rates applicable to each bracket and increased the maximum rate from 6 to 10 percent.

1968—Subsec. (a). Section 201 of Pub. L. 90–450 amended the subsection generally. The amendment rearranged the bracket structure of the table of taxable income and the rates applicable to each bracket and increased the maximum rate from 5 to 6 percent.

EFFECTIVE DATE OF PUB. L. 90–450

Section 205, Pub. L. 90–450, provided: "The amendments made by sections 201 and 202 of this title [amendments of 47–1567b(a), 47–1571a and 47–1574b] shall be applicable to taxable years beginning after December 31, 1967. The amendments made by section 203 [amendments of 47–1586f(a)(4) and 47–1589(b)] of this title shall take effect on the date of enactment of this Act." [Aug. 2, 1968.]

PRESERVATION OF EXISTING RIGHTS AND LIABILITIES—PROSECUTIONS UNDER EXISTING LAWS

Section 204, Pub. L. 90–450, provided:

"(a) The amendment of any provision of the District of Columbia Income and Franchise Tax Act of 1947 [amendments of sections 47–1567b(a), 47–1571a, 47–1574b, 47–1586f(a)(4) and 47–1589(b)] shall not affect any act done or any right accruing or accrued, or any suit or proceeding had or commenced in any civil cause before such amendment; but all rights and liabilities under such Act shall continue, and may be enforced in the same manner and to the same extent, as if such amendment had not been made.

"(b) All offenses committed, and all penalties incurred, under any provision of law hereby amended, may be prosecuted and punished in the same manner and with the same effect as if this title [the amendments enumerated above] had not been enacted."

SHORT TITLE

The enacting clause of act Aug. 2, 1968, Pub. L. 90–450, provided: That this Act [amending sections 25–107, 25–115(a), 47–1567b(a), 47–1571a, 47–1574b, 47–1586f(a)(4), 47–1589(b), 47–2501a, 47–2601, 47–2602, 47–2605, 47–2701, and 47–2702 and enacting sections 31–1118 and 47–145] may be cited as the "District of Columbia Revenue Act of 1968."

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(370) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (b) in the particulars described in par. 370, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1574e, 47–1577b.

NOTES TO DECISIONS

Domicile as a prerequisite to tax liability

District of Columbia Income and Franchise Tax Act did not by its terms subject to tax income earned in the first three months of year by person who was domiciled in another state and then moved to the District in which he became a domicile and resident thereof for the remaining nine months of the year and who paid tax to District on income earned for nine months in which he was a domicile. *District of Columbia* v. *P. S. Davis* (1967, 371 F. 2d 964, 125 U.S. App. D.C. 311).

§ 47–1567c. Repealed.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1574e, 47–1577b.

§ 47–1567d. Credits against tax.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1567b, 47–1574e, 47–1577b.

NOTES TO DECISIONS

Domicile as a prerequisite to tax liability

District of Columbia Income and Franchise Tax Act did not by its terms subject to tax income earned in the first three months of year by person who was domiciled in another state and then moved to the District in which he became a domicile and resident thereof for the remaining nine months of the year and who paid tax to District on income earned for nine months in which he was a domicile. *District of Columbia* v. *P. S. Davis* (1967, 371 F. 2d 964, 125 U.S. App. D.C. 311).

§ 47–1567e. Credit for sales tax paid.

(a)(1) For the purpose of providing relief to certain low-income residents of the District for sales tax paid on purchases of groceries, there shall be allowed to an individual a credit against the tax (if any) imposed by this article in an amount determined in accordance with the following table:

If the adjusted gross income is:	*The credit shall be the product of the number of personal exemptions allowed an individual on his return under section 47–1567a times–*
Not over $2,000	$6.00
Over $2,000, but not over $4,000	4.00
Over $4,000, but not over $6,000	2.00

(2) For purposes of paragraph (1), in determining the number of personal exemptions allowed an individual on his return under section 47–1567a—

(A) there shall be excluded any exemption based on age or blindness,

(B) there shall be included one additional exemption in any case in which an exemption of $2,000 is allowed for a head of family or a married person living with husband or wife, and

(C) there shall be excluded any exemption for any person who is an inmate or resident patient of a publicly owned and operated institution for an aggregate or more than 183 days of the taxable year.

(b) If the amount of credit allowed an individual by subsection (a) for a taxable year exceeds the amount of tax (computed without regard to such subsection but after allowance of any other credit allowable under this article) imposed under this article on such individual for such taxable year a refund shall be allowed such individual to the extent that such credit exceeds the amount of such tax.

(c) No credit (or refund) shall be allowed to an individual under this section unless—

(1) such individual files a return under this article for a taxable year of not less than twelve months,

(2) such individual maintained his place of abode within the District for the entire taxable year of twelve months, and

(3) (A) in the case of an individual who is required to file a return under sections 47–1564 to 45–1564c, a return is filed by such individual within the time prescribed in section 47–1564b, or

(B) in the case of an individual who is not required to file a return under sections 47–1564 to 45–1564c, a return is filed by such individual under

this section not later than the fifteenth day of the fourth month following the close of such taxable year.

In the case of an individual described in paragraph (3)(B), the Commissioner may grant a reasonable extension of time (but not more than six months) for filing a return under this section whenever in the Commissioner's judgment good cause exists therefor.

(d)(1) A husband and wife filing separate returns for a taxable year for which a joint return could have been made by them may claim between them only the total credit (or refund) to which they would have been entitled under this section had a joint return been filed.

(2) No individual for whom a personal exemption was allowed on another individual's return shall be entitled to a credit (or refund) under this section. (July 16, 1947, 61 Stat. 345, ch. 258, Art. I, title VI, § 6, as added, Oct. 31, 1969, Pub. L. 91–106, title VI, § 605(a), 83 Stat. 179.)

REFERENCE IN TEXT

"This article" referred to in text is the act of July 16, 1947, ch. 258, 61 Stat. 331 et seq., known as the "District of Columbia Income and Franchise Tax Act of 1947" generally classified to title 47, chapter 15 of the D.C. Code. For complete classification see tables.

EFFECTIVE DATES AND CONSTRUCTION OF 1969 AMENDMENTS

See secs. 606 and 607 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–1551c.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this Act) may be cited as the 'District of Columbia Revenue Act of 1969'."

TITLE VII.—TAX ON CORPORATIONS

§ 47–1571. Taxable income defined.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1574, 47–1589e, 47–1591, 47–2413.

NOTES TO DECISIONS

Principal place of business

In this case, there is no question that the principal offices and businesses were located outside the District of Columbia and were located in the states where the loans were made and the payments thereon received. The facts are clear that the principal place of business for each subsidiary was not in the District of Columbia, and the argument that for source purposes there could be more than one source—one within and one without the District of Columbia—is answered by pointing out that by its clear meaning this cannot be. *State Loan and Finance Corporation etc.* v. *District of Columbia* (1967, 381 F. 2d 895, 127 U.S. App. D.C. 116).

Source and situs

The source of interest income is the obligor and its situs is his residence. *State Loan and Finance Corporation etc.* v. *District of Columbia* (1967, 381 F. 2d 895, 127 U.S. App. D.C. 116).

Source of dividends

The source of dividends is the domicile of the paying or issuing corporation. *State Loan and Finance Corporation etc.* v. *District of Columbia* (1967, 381 F. 2d 895, 127 U.S. App. D.C. 116).

Source of income defined

Common sense requires that the question of source or domicile in the case of dividend and interest source is one which is resolved by finding the principal office and business of the corporation. *State Loan and Finance Corporation etc.* v. *District of Columbia* (1967, 381 F. 2d 895, 127 U.S. App. D.C. 116).

§ 47–1571a. Imposition and rate of tax.

For the privilege of carrying on or engaging in any trade or business within the District and of receiving income from sources within the District, there is hereby levied for each taxable year a tax at the rate of 6 per centum upon the taxable income of every corporation, whether domestic or foreign (except those expressly exempt under section 47–1554). The minimum tax payable shall be $25.00. (July 16, 1947, 61 Stat. 345, ch. 258, Art. I, title VII, § 2; Aug. 2, 1968, Pub. L. 90–450, title II, § 202(a), 82 Stat. 612; Oct. 31, 1969, Pub. L. 91–106, title VI, § 604(a)(1), 83 Stat. 178.)

AMENDMENTS

1969—Act Oct. 31, 1969, Pub. L. 91–106, § 604(a)(1) amended section by adding "The minimum tax payable shall be $25.00".

1968—Section 202(a), Pub. L. 90–450, amended section by striking out "5 per centum" and inserting in lieu thereof "6 per centum".

EFFECTIVE DATES AND CONSTRUCTION OF 1969 AMENDMENTS

See secs. 606 and 607 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–1551c.

EFFECTIVE DATE OF 1968 AMENDMENT

See § 205 of Pub. L. 90–450, set out as a note to sec. 47–1567b.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

PRESERVATION OF EXISTING RIGHTS AND LIABILITIES—PROSECUTIONS UNDER EXISTING LAWS

See § 204 of Pub. L. 90–450, set out as a note to sec. 47–1567b.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this Act.) may be cited as the 'District of Columbia Revenue Act of 1969'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1574.

NOTES TO DECISIONS

Principal place of business

In this case, there is no question that the principal offices and businesses were located outside the District of Columbia and were located in the states where the loans were made and the payments thereon received. The facts are clear that the principal place of business for each subsidiary was not in the District of Columbia, and the argument that for source purposes there could be more than one source—one within and one without the District of Columbia—is answered by pointing out that by its clear meaning this cannot be. *State Loan and Finance Corporation etc.* v. *District of Columbia* (1967, 381 F. 2d 895, 127 U.S.C. App. D.C. 116).

Source and situs

The source of interest income is the obligor and its situs is his residence. *State Loan and Finance Corporation etc.* v. *District of Columbia* (1967, 381 F. 2d 895, 127 U.S. App. D.C. 116).

Source of dividends

The source of dividends is the domicile of the paying or issuing corporation. *State Loan and Finance Corporation etc.* v. *District of Columbia* (1967, 381 F. 2d 895, 127 U.S. App. D.C. 116).

TITLE VIII.—TAX ON UNINCORPORATED BUSINESSES

§ 47–1574. Definition of unincorporated business.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1557a, 47–1557b, 47–1564a, 47–1567, 47–1567d, 47–1589e, 47–1591, 47–2413.

§ 47–1574a. Taxable income defined.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1557a, 47–1557b, 47–1564a, 47–1567, 47–1567d.

§ 47–1574b. Imposition of rate of tax.

For the privilege of carrying on or engaging in any trade or business within the District and of receiving income from sources within the District, there is hereby levied for each taxable year a tax at the rate of 6 per centum upon the taxable income of every unincorporated business, whether domestic or foreign (except those expressly exempt under section 47–1554). The minimum tax payable shall be $25.00. (July 16, 1947, 61 Stat. 346, Art. I, title VIII, § 3; Aug. 2, 1968, Pub. L. 90–450, title II, § 202(b), 82 Stat. 612; Oct. 31, 1969, Pub. L. 91–106, title VI, § 604(a)(2), 83 Stat. 179.)

AMENDMENTS

1969—Act Oct. 31, 1969, Pub. L. 91–106, § 604(a)(2) amended section by adding "The minimum tax payable shall be $25.00."

1968—Section 202(b), Pub. L. 90–450, amended section by striking out "5 per centum" and inserting in lieu thereof "6 per centum".

EFFECTIVE DATES AND CONSTRUCTION OF 1969 AMENDMENTS

See. secs. 606 and 607 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–1551c.

EFFECTIVE DATE OF 1968 AMENDMENTS

See § 205 of Pub. L. 90–450, set out as a note to sec. 47–1567b.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

PRESERVATION OF EXISTING RIGHTS AND LIABILITIES—PROSECUTIONS UNDER EXISTING LAWS

See § 204 of Pub. L. 90–450, set out as a note to sec. 47–1567b.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this Act) may be cited as the 'District of Columbia Revenue Act of 1969'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1557a, 47–1557b, 47–1564a, 47–1567, 47–1567d, 47–1574c, 47–1574d.

§ 47–1574c. Exemption.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1557a, 47–1557b, 47–1564a, 47–1567, 47–1567d, 47–1574a.

§§ 47–1574d, 47–1574e.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–1557a, 47–1557b, 47–1564a, 47–1567, 47–1567d.

TITLE IX.—TAX ON ESTATES AND TRUSTS

§ 47–1577. Resident and nonresident estates and trusts defined.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1577a, 47–1589e, 47–1591, 47–2413.

§ 47–1577c. Computation of tax.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1557a.

§ 47–1577d. Net income.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1577e.

§§ 47–1577f, 47–1577g.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 47–1577c.

TITLE X.—PURPOSE OF SUBCHAPTER AND ALLOCATION AND APPORTIONMENT

§ 47–1580. Purpose of subchapter.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1557b, 47–1564a, 47–1571, 47–1574a, 47–1589e, 47–1591, 47–1591f, 47–2413.

NOTES TO DECISIONS

Source and situs

The source of interest income is the obligor and its situs is his residence. *State Loan and Finance Corporation etc.* v. *District of Columbia* (1967, 381 F. 2d 895, 127 U.S. App. D.C. 116).

Source of dividends

The source of dividends is the domicile of the paying or issuing corporation. *State Loan and Finance Corporation etc.* v. *District of Columbia* (1967, 381 F. 2d 895, 127 U.S. App. D.C. 116).

§ 47–1580a. Allocation and apportionment.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(371) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in the particulars described in par. 371, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1557b, 47–1564a, 47–1571, 47–1574a, 47–1591f.

§ 47–1580b. Allocation of income and deductions between organizations, etc.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1557b, 47–1564a, 47–1571, 47–1574a, 47–1591f.

TITLE XI.—BASES

§ 47–1583. Basis for determining gain or loss.

The basis for determining the gain or loss from the sale or other disposition of property shall be the same basis as that provided for determining gain or loss under the Internal Revenue Code of 1954. (July 16, 1947, 61 Stat. 350, ch. 258, Art. I, title XI, § 1; Oct. 31, 1969, Pub. L. 91–106, title VI, § 601(c)(1), 83 Stat. 177.)

AMENDMENT

1969—Act Oct. 31, 1969, Pub. L. 91–106, § 601(c)(1), amended section to read as above set out. The prior provisions of the section contained different and detailed provisions for determining basis of gain or loss. See 1967 edition of the code.

EFFECTIVE DATES AND CONSTRUCTION OF 1969 AMENDMENTS

See secs. 606 and 607 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–1551c.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this Act) may be cited as the 'District of Columbia Revenue Act of 1969'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1583a, 47–1583d, 47–1583e, 47–1589e, 47–1591, 47–2413.

NOTES TO DECISIONS

Liquidating shares

Stockholders' gain on the sale of liquidating shares which they had held for three days before sale is stockholders' share of sale price of stock less the cost to them of stock they sold. *J. H. Verkouteren* v. *District of Columbia* (1970, 433 F. 2d 461, —U.S. App. D.C. —).

The cost of liquidating shares to shareholders who held the shares for three days before sale to others is the amount of dividend attributed to shareholders in regard to the stock equalling earned surplus and shareholders' gain on sale would be determined using that portion as cost. *Id.*

§ 47–1583a. Computation of gain or loss.

The gain or loss, as the case may be, from the sale or other disposition of property, including the amount realized and the amount recognized, shall be determined in the same manner provided for the determination of gain or loss for Federal income tax purposes under the Internal Revenue Code of 1954. (July 16, 1947, 61 Stat. 350, ch. 258, Art. I, title XI, § 2; Oct. 31, 1969, Pub. L. 91–106, title VI, § 601(c)(2)(A)(B), 83 Stat. 177.)

AMENDMENTS

1969—Act Oct. 31, Pub. L. 91–106, § 601(c)(2)(A)(B), amended section to read as above set out, also the table of contents relating to the section to read as above. Prior section contained different provisions. See 1967 edition of the code.

EFFECTIVE DATES AND CONSTRUCTION OF 1969 AMENDMENTS

See secs. 606 and 607 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–1551c.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1583d.

NOTES TO DECISIONS

Liquidating shares

Stockholders' gain on sale of liquidating shares which they had held for three days before sale was stockholders' share of sale price of stock less cost to them of stock they sold. *J. H. Verkouteren* v. *District of Columbia* (1970, 433 F. 2d 461, —U.S. App. D.C. —).

Cost of liquidating shares to shareholders who held the shares for three days before sale to others was amount of dividend attributed to shareholders in regard to the stock equalling earned surplus and shareholders' gain on sale would be determined using that portion as cost. *Id.*

§ 47–1583b. Repealed. Oct. 31, 1969, Pub. L. 91–106, title VI, § 601(c)(3)(A)(B).

Section, act of July 16, 1947, 61 Stat. 351, ch. 258, Art. I, title XI, § 3, dealt with provisions relating to stocks or securities received in connection with the reorganization of a corporation. For provisions of the section see 1967 edition of the code.

EFFECTIVE DATES AND CONSTRUCTION OF 1969 AMENDMENTS

See secs. 606 and 607 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–1551c.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1583d.

§ 47–1583c. Basis for dividends paid in property.

NOTES TO DECISIONS

Liquidating shares

The cost of liquidating shares to shareholders who held the shares for three days before sale to others is the amount of dividend attributed to shareholders in regard to the stock equalling earned surplus and shareholders' gain on sale would be determined using that portion as cost. *J. H. Verkouteren* v. *District of Columbia* (1970, 433 F. 2d 461, —U.S. App. D.C. —).

Stockholders' gain on the sale of liquidating shares which they had held for three days before sale is stockholders' share of sale price of stock less the cost to them of stock they sold. *Id.*

§ 47–1583d. Repealed. Oct. 31, 1969, Pub. L. 91–106, title VI, § 601(c)(3)(A)(B).

Section, act July 16, 1947, 61 Stat. 351, ch. 258, Art. I, title XI, § 5, provided that sections 47–1583 through 47–1583b did not apply to the sale or exchange of property as defined as capital assets in 47–1551c(*l*).

EFFECTIVE DATES AND CONSTRUCTION OF 1969 AMENDMENTS

See secs. 606 and 607 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–1551c.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

§ 47–1583e. Depreciation.

The basis used in determining the amount allowable as a deduction from gross income under the provisions of section 47–1557b(a)(7) shall be the same basis as that provided for determining the gain from the sale or other disposition of property for Federal income tax purposes under the Internal Revenue Code of 1954. (July 16, 1947, 61 Stat. 351, ch. 258, Art. I, title XI, § 6; Oct. 31, 1969, Pub. L. 91–106, title VI, § 601(c)(4), 83 Stat. 177.)

AMENDMENTS

1969—Act Oct. 31, 1969, Pub. L. 91–106, § 601(c)(4) amended section to read as above set out. Prior to this amendment the section contained different provisions for determining the basis for computing a deduction. For prior provisions see 1967 edition of the code.

EFFECTIVE DATES AND CONSTRUCTION OF 1969 AMENDMENTS

See secs. 606 and 607 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–1551c.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act [classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act] may be cited as the 'District of Columbia Revenue Act of 1969'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1557b.

TITLE XII.—ASSESSMENT AND COLLECTION; TIME OF PAYMENT

§ 47–1586. Duties of Assessor.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1589e, 47–1591, 47–2413.

§ 47–1586b. Examination of books and witnesses.

The Assessor, for the purpose of ascertaining the correctness of any return filed hereunder, or for the purpose of making an estimate of the taxable income of any taxpayer, is authorized to examine any books, papers, records, or memoranda of any person bearing upon the matters required to be included in the return and may summon any person to appear and produce books, records, papers, or memoranda bearing upon the matters required to be included in the return, and to give testimony or answer interrogatories under oath respecting the same, and the Assessor shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police Department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then, and in that event, the Assessor may report that fact to the Superior Court of the District of Columbia, or one of the judges thereof, and said court or any judge thereof hereby is empowered to compel obedience to such summons to the same extent as witnesses may be compelled to obey the subpenas of that court. Any person in custody or control of any books, papers, records, or memoranda bearing upon the matters required to be included in such returns, who shall refuse to permit the examination by the Assessor or any person designated by him of any such books, papers, records, or memoranda, or who shall obstruct or hinder the Assessor or any person designated by him in the examination of any books, papers, records, or memoranda, shall upon conviction thereof be fined not more than $300. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia. (July 16, 1947, 61 Stat. 352, ch. 258, Art. I, title XII, § 3; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), (c)(51), 84 Stat. 570, 573.)

AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

Section 155(c)(51) of Act July 29, 1970, "Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 47–1586d. Determination and assessment of deficiency.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1586f, 47–1586j, 47–1593.

§ 47–1586f. Payment of tax.

(a) (1), (2), (3) * * *

(4) EMPLOYERS.—Every employer required to deduct and withhold tax under this subchapter shall make a return of, and pay to the District, the tax required to be withheld under this subchapter for such periods and at such times as the District of Columbia Council may prescribe.

* * * * *

(As amended Aug. 2, 1968, Pub. L. 90–450, title II, § 203(a), 82 Stat. 612.)

AMENDMENT

1968—Section 203(a), Pub. L. 90–450, amended subsection (a)(4) to read as above set out. The amendment eliminated the requirement of making quaterly returns and payments by the employer and authorized the District of Columbia Council to prescribe the periods and times for the returns and payments.

EFFECTIVE DATE OF PUB. L. 90–450

See § 205 of Pub. L. 90–450, set out as a note to sec. 47–1567b.

PRESERVATION OF EXISTING RIGHTS AND LIABILITIES—PROSECUTIONS UNDER EXISTING LAWS

See § 204 of Pub. L. 90–450, set out as a note to sec. 47–1567b.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1589d.

§ 47–1586g. Withholding of tax.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(372) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to prescribing and promulgating all regulations referred to in this section, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1586j.

§ 47–1586j. Refunds.

(a) REFUND TO TAXPAYER. Except as to any deficiency taxes assessed under the provisions of section 47–1586d, where there has been an overpayment of any tax imposed by this subchapter, the amount of such overpayment may be credited against any liability in respect of any income or franchise tax or installment thereof (whether such tax was assessed as a deficiency or otherwise), on the part of the

person who made the overpayment, and the balance shall be refunded to such person.

No such credit or refund shall be allowed after three years from the time the tax was paid unless before the expiration of such period a claim therefor is filed by the taxpayer, and no tax or part thereof which the Assessor may determine to have been an overpayment shall be refunded after the period prescribed therefor in the Act appropriating the funds from which such refund would otherwise be made. The amount of such credit or refund shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim, or if no claim was filed, then during the three years immediately preceding the allowance of such credit or refund. Every claim for credit or refund must be in writing, under oath; must state the specific grounds upon which the claim is founded, and must be filed with the Assessor: *Provided,* That if it shall be determined by the Assessor, the Superior Court of the District of Columbia, or any court that any part of any tax which was assessed as a deficiency under the provisions of section 47–1586d was an overpayment, interest shall be allowed and paid upon such overpayment at the rate of one-third of 1 per centum per month or portion of a month from the date such overpayments were paid until the date of refund, and in addition thereto any interest upon such overpayment which was paid by the taxpayer shall be refunded.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 156(f), 84 Stat. 574.)

AMENDMENT

1970—Section 156(f) of Act July 29, 1970, Public Law 91–358, amended section by striking out "Board of Tax Appeals for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1593.

§ 47–1586k. Closing agreements.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–1586*l*. Compromises.

* * * * *

(b) *Concealment of assets.*—Any person who, in connection with any compromise under this section or offer of such compromise or in connection with any closing agreement under this title or offer to enter into any such agreement, willfully (1) conceals from any officer or employee of the District of Columbia any property belonging to the estate of the taxpayer or other person liable with respect of the tax, or (2) receives, destroys, mutilates, or falsifies any book, document, or record or makes under oath any false statement relating to the estate or the financial condition of the taxpayer or to the person liable in respect of the tax, shall, upon conviction thereof, be fined not more than $5,000 or imprisoned for not more than one year, or both. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the Corporation Counsel of the District of Columbia or any of his assistants in the name of the District of Columbia.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (b) by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–1586*l*–1. Declarations of estimated tax by corporations and unincorporated businesses—Failure by corporation or unincorporated business to pay estimated tax—Overpayment; credit of tax.

(a) DECLARATION OF ESTIMATED TAX.—Every corporation and unincorporated business required to make and file a franchise tax return under this subchapter shall make and file a declaration of estimated tax at such time or times and under such conditions, and shall make payments of such tax during its taxable year in such amounts and under such conditions, as the District of Columbia Council shall by regulation prescribe. In the case of the taxable year beginning in 1970, such regulations may not require payment before the last day on which a return for such taxable year is required to be filed under section 47–1564b(a) of an aggregate amount of estimated tax for such year in excess of one-half of such estimated tax.

(b) FAILURE BY CORPORATION OR UNINCORPORATED BUSINESS TO PAY ESTIMATED TAX.—(1) *Addition to the tax.*—In case of any underpayment of estimated tax by a corporation or an unincorporated business, there shall be added to the tax for the taxable year an amount determined at the rate of 6 per centum per annum upon the amount of the underpayment (determined under paragraph (2)) for the period of the underpayment (determined under paragraph (3)).

(2) *Amount of underpayment.*—For purposes of paragraph (1), the amount of the underpayment shall be the excess of—

(A) the amount of the installment which would be required to be paid if the estimated tax were equal to 80 per centum of the tax shown on the return for the taxable year or, if no return was filed, 80 per centum of the tax for such year, over

(B) the amount, if any, of the installment paid on or before the last date prescribed for payment.

(3) *Period of underpayment.*—The period of the underpayment shall run from the date the installment was required to be paid to whichever of the following dates is the earlier—

(A) the 15th day of the fourth month following the close of the taxable year; or

(B) with respect to any portion of the underpayment, the date on which such portion is paid.

For purposes of this paragraph, a payment of estimated tax on any installment date shall be considered a payment of any previous underpayment only to the extent such payment exceeds the amount of the installment determined under paragraph (2) (A) for such installment date.

(c) OVERPAYMENT; CREDIT OF TAX.—Overpayment resulting from the payment of estimated tax for a taxable year in excess of the amount determined to be due upon the filing of a franchise tax return for such taxable year may be credited against the amount of estimated tax determined to be due on any declaration filed for the next succeeding taxable year or for any deficiency or nonpayment of tax for any previous taxable year. No refund shall be made of any estimated tax paid unless a complete return is filed. (July 16, 1947, ch. 258, Art. I, title XII, § 14, as added by Act Oct. 31, 1969, Pub. L. 91–106, title V, § 603(a), 83 Stat. 177.)

EFFECTIVE DATES AND CONSTRUCTION OF 1969 AMENDMENTS

See secs. 606 and 607 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–1551c.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

§ 47–1586m. Definition of "person".

The term "person" as used in this title includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee, or member is under duty to perform the act in respect to which the violation occurs. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I. title XII, § 14; renumbered as § 15 by act Oct. 31, 1969, Pub. L. 91–106, title VI, § 603(a), 83 Stat. 177.)

AMENDMENTS

1969—Act Oct. 31, 1969, Pub. L. 91–106, § 603(a) amended this section by redesignating it as section 15 and also added a new section 14, set out in this code as 47–1586*l*–1.

EFFECTIVE DATES AND CONSTRUCTION OF 1969 AMENDMENTS

See secs. 606 and 607 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–1551c.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

§ 47–1586n. Payment to Collector and receipts.

The taxes provided under this subchapter shall be collected by the Collector and the revenues derived therefrom shall be turned over to the Treasury of the United States for credit to the District in the same manner as other revenues are turned over to the United States Treasury for credit to the District. The Collector shall, upon written request, give to the person making payment of any income tax a full written or printed receipt therefor. (July 16, 1947, 61 Stat. 356, ch. 258, Art. I, title XII, § 15; renumbered as § 16 by act Oct. 31, 1969, Pub. L. 91–106, title VI, § 603(a) 83 Stat. 177.)

AMENDMENTS

1969—Act Oct. 31, 1969, Pub. L. 91–106, § 603a amended this section by redesignating it as section 16 and also added a new section 14, set out in this code as 47–1586*l*–1.

EFFECTIVE DATES AND CONSTRUCTION OF 1969 AMENDMENTS

See secs. 606 and 607 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–1551c.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

TITLE XIII.—PENALTIES AND INTEREST

§ 47–1589. Failure to file return.

(a) * * *

(b) FAILURE TO FILE EMPLOYER'S RETURN.—In the case of any employer—

(1) who pursuant to this article is required to withhold taxes on wages, make a return of such taxes, and pay to the District the taxes required to be withheld pursuant to this subchapter, and

(2) who fails to withhold such taxes, make such return, or pay to the District the taxes required to be withheld pursuant to this subchapter,

there shall be imposed on such employer a civil penalty (in addition to any criminal penalty provided for in this subchapter) of 5 per centum of the amount required to be shown as tax on such return if the failure is for not more than one month, with an additional 5 per centum for each additional month or fraction thereof during which such failure continues, not exceeding 25 per centum in the aggregate.

* * * * *

(As amended Aug. 2, 1968, Pub. L. 90–450, title II, § 203(b), 82 Stat. 612.)

AMENDMENT

1968—Section 203(b), Pub. L. 90–450, amended subsection (b) to read as above set out. The amendment changed the civil penalty provisions from "25 per centum of the amount of taxes that should have been properly withheld and paid over" to "5 per centum of the amount required to be shown as tax on such return if the failure is for not more than one month, with an additional 5 per centum for each additional month or fraction thereof during which such failure continues, not exceeding 25 per centum in the aggregate."

EFFECTIVE DATE OF 1968 AMENDMENT

See § 205 of Pub. L. 90–450, set out as a note to sec. 47–1567b.

PRESERVATION OF EXISTING RIGHTS AND LIABILITIES—PROSECUTIONS UNDER EXISTING LAWS

See § 204 of Pub. L. 90–450, set out as a note to sec. 47–1567b.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1589c, 47–1589e, 47–1591, 47–2413.

§§ 47–1589a, 47–1589b, 47–1589d.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 47–1589c

§ 47–1589e. Penalties.

(a) *Willful violation.*—Any person required under this subchapter to pay or collect any tax, or required by law or regulations made under authority thereof to make a return, keep any records, or supply any information, for the purposes of this subchapter, who willfully refuses to pay or collect such tax, to make such return, to keep such records, or to supply such information, or who makes a false or fraudulent return, or who willfully attempts in any manner to defeat or evade the tax imposed by sections 47–1551 to 47–1595, shall, in addition to other penalties provided by law, be guilty of a misdemeanor and shall be fined not more than $5,000 or imprisoned for not more than one year, or both, together with costs of prosecution. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the Corporation Counsel or one of his assistants in the name of the District.

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended subsec. (a) by striking out "District of Columbia Court of General Session" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TITLE XIV.—LICENSES

§ 47–1591. Requirement. [Partial repeal.]

Subsection (a) act July 16, 1947, 61 Stat. 357, ch. 258, Art. I, title XIV, § 1, as amended was stricken by the act described below. The same act also struck out the subsection designation (b) for the remainder of the section. Former subsection (a) dealt with the licensing requirements for corporations or unincorporated business as a condition for carrying on any trade or business in the District. For complete provisions of former subsection (a) see 1967 edition of the code. The above provisions were stricken by act of Oct. 31, 1969, Pub. L. 91–106, title VI, § 604(b)(1), 83 Stat. 179.

EFFECTIVE DATES AND CONSTRUCTION OF 1969 AMENDMENTS

See secs. 606 and 607 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–1551c.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1589e, 47–1591e, 47–1591f, 47–2413.

§ 47–1591d. Revocation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–1591e. Renewal.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–1591f. Penalty for failure to obtain license.

Any person who violates section 47–1591 shall be fined not more than $300, and each day that such violation continues shall constitute a separate offense. All prosecutions under this section shall be brought in the Superior Court of the District of Columbia on information by the Corporation Counsel or any of his assistants in the name of the District. (July 16, 1947, 61 Stat. 358, ch. 258, Art. I, title XIV, § 7; Mar. 31, 1956, 70 Stat. 80, ch. 154, § 18, July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1, Oct. 31, 1969, Pub. L. 91–106, § 604(b)(2), 83 Stat. 179; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

1969—Act Oct. 31, 1969, Pub. L. 91–106, title VI, § 604(b)(2) amended section to read as above set out limiting its applicability to violations of section 47–1591. For provisions of section see 1967 edition of the code.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

EFFECTIVE DATES AND CONSTRUCTION OF 1969 AMENDMENTS

See secs. 606 and 607 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–1551c.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

TITLE XV.—APPEAL

§ 47–1593. Appeal to Superior Court of the District of Columbia.

Any person aggrieved by any assessment of a deficiency in tax determined and assessed by the Assessor under the provisions of section 47–1586d and any person aggrieved by the denial of any claim for refund made under the provisions of section 47–1586j, may, within six months from the date of the assessment of the deficiency or from the date of the denial of a claim for refund, as the case may be, appeal to the Superior Court of the District of Columbia, in the same manner and to the same

extent as set forth in sections 47–2403, 47–2404, 47–2407 to 47–2411. (July 16, 1947, 61 Stat. 359, ch. 258, Art. I, title XV, § 1; July 29, 1970, Pub. L. 91–358, title I, §§ 156(f), 161(k), 84 Stat. 574, 582.)

AMENDMENTS

1970—Section 156(f) of Act July 29, 1970, Public Law 91–358, amended section by striking out "Board of Tax Appeals for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

Section 161(k) of Act July 29, 1970, Public Law 91–358 amended section by striking out "ninety days" and inserting "six months".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1589e, 47–1591, 47–1593a, 47–2413.

§ 47–1593a. Repealed. July 29, 1970, Pub. L. 91–358, § 161(i), title I, 84 Stat. 582.

Section, Act of July 16, 1947, 61 Stat. 359, ch. 258, Art. I, title XV, § 2, dealt with election of remedies.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

TITLE XVI.—RULES AND REGULATIONS

§ 47–1595. Commissioners to prescribe and publish rules.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(373) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1589e, 47–1591, 47–2413.

§ 47–1595a. Commissioners authorized to make rules and regulations in regard to District of Columbia Revenue Act of 1956.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(374) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 16.—INHERITANCE AND ESTATE TAXES

ARTICLE I—INHERITANCE TAX

§ 47–1601. Imposition of tax.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1602, 47–1604 to 47–1606, 47–1608, 47–1624, 47–1627.

§ 47–1602. Tax based on market value—Appraisal.

NOTES TO DECISIONS

Deduction of federal estate taxes

Regulation permitting deduction of federal estate taxes paid only on property subject to District of Columbia inheritance tax was required to give way to plain meaning of statute manifesting clear intent of Congress to impose tax on market value of inheritance received and containing no estate tax apportionment provisions. *District of Columbia* v. *M. W. Payne* (1966, 374 F. 2d 261, 126 U.S. App. D.C. 47).

The full amount of federal estate taxes, which were paid from personal residuary estate as required by law and a portion of which had been paid on value of Ohio realty devised to persons other than residuary legatee, was deductible in computing residuary legatee's District of Columbia inheritance tax, notwithstanding regulation permitting deduction of federal estate taxes paid only on property subject to the District inheritance tax. *Id.*

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1601, 47–1608, 47–1624. 47–1627.

§ 47–1603. Appraisal deemed true value—Tax to be lien—Exceptions.

The appraisal thus made shall be deemed and taken to be the true value of the said property or interest therein upon which the said tax shall be paid, and the amount of said tax and the tax imposed by sections 47–1608 to 47–1615 shall be a lien on said property or interest therein for the period of ten years from the date of death of the decedent: *Provided, however,* That such lien shall not attach to any personal property sold or disposed of for value by an administrator, executor, or collector, of the estate of such decedent appointed by the court having probate jurisdiction or by a trustee appointed under a will filed with the register of wills for the District or by order of said court, or his successor approved by said court, but a lien for said taxes shall attach on all property acquired in substitution therefor for a period of ten years after the acquisition of such substituted property: *And provided further,* That such lien upon such substituted property shall, upon sale by such personal representatives, be extinguished and shall reattach in the manner as provided with respect of such original property. (Aug. 17, 1937, 50 Stat. 684, ch. 690, title V, Art. I, § 3; May 16, 1938, 52 Stat. 361, ch. 223, § 5(b); July 26, 1939, 53 Stat. 1113, ch. 367, title V, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 158(d)(1), 84 Stat. 576.)

AMENDMENT

1970—Section 158(d)(1) of Act July 29, 1970, Public Law 91–358 amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1601, 47–1608, 47–1624, 47–1627.

§ 47–1604. Report by decedent's personal representative—Contents—Payment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1601, 47–1607, 47–1608, 47–1624, 47–1627.

§ 47–1605. Collection of tax from distributive share.

The personal representative of the decedent shall collect from each beneficiary entitled to a distributive share or legacy the tax imposed upon such distributive share or legacy in section 47–1601, and if the said beneficiary shall neglect or fail to pay the same within fifteen months after the date of the death of the decedent such personal representative shall, upon the order of the court having probate

jurisdiction, sell for cash so much of said distributive share or legacy as may be necessary to pay said tax and all the expenses of said sale. (Aug. 17, 1937, 50 Stat. 685, ch. 690, title V, Art. I, § 5; July 26, 1939, 53 Stat. 1113, ch. 367, title V, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 158(d)(2), 84 Stat. 576.)

AMENDMENT

1970—Section 158(d)(2) of Act July 29, 1970, Public Law 91–358 amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "court having probate jurisdiction".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1601, 47–1608, 47–1624, 47–1627.

§ 47–1606. Property not under control of personal representative.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1601, 47–1607, 47–1608, 47–1624, 47–1627.

§ 47–1607. Life and future estates—Payment of tax—Lien.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1601, 47–1608, 47–1624, 47–1627.

ARTICLE II—ESTATE TAX

§ 47–1608. Imposition of tax—Additional levy on transfers.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1603, 47–1609 to 47–1611, 47–1615, 47–1624.

§ 47–1609. Credits—Restriction.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1603, 47–1610, 47–1613, 47–1615, 47–1624.

§§ 47–1610 to 47–1614.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–1603, 47–1615, 47–1624.

§ 47–1615. Tax payable within seventeen months.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1603, 47–1624.

ARTICLE III—GENERAL

§§ 47–1616, 47–1617.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 47–1624.

§ 47–1618. Administration—Rules—Testimony—Production of books and records.

The commissioners shall have supervision of the enforcement of this chapter and shall have the power to make such rules and regulations, consistent with this chapter, as may be necessary for enforcement of this chapter and efficient administration and to provide for the granting of extension of time within which to perform the duties imposed by this chapter. The assessor shall determine all taxes assessable under this chapter, and immediately upon the determination of same, shall forward a statement of the taxes determined to the person or persons chargeable with the payment thereof and shall give advice thereof to the collector of taxes.

The assessor is hereby authorized and empowered to summon any person before him to give testimony on oath or affirmation or to produce all books, records, papers, documents, or other legal evidence as to any matter relating to this chapter and the assessor is authorized to administer oaths and to take testimony for the purposes of the administration of this chapter. Such summons may be served by any member of the Metropolitan police department. If any person having been personally summoned shall neglect or refuse to obey the summons issued as herein provided, then and in that event the assessor may report that fact to the Superior Court of the District of Columbia or one of the judges thereof, and said court or any judge thereof hereby is empowered to compel obedience to said summons to the same extent as witnesses may be compelled to obey the subpenas of that court. (Aug. 17, 1937, 50 Stat. 685, ch. 690, title V, Art. III, § 3, formerly Art. I, § 9, renumbered and amended July 26, 1939, 53 Stat. 1116, ch. 367, title V, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(49)(C), 84 Stat. 573.)

AMENDMENT

1970—Section 155(c)(49)(C) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(375) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to making rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1624.

§ 47–1619. Arrears.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1615, 47–1624.

§ 47–1620. Enforcement.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1624.

§§ 47–1621, 47–1622.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 47–1624.

§ 47–1623. Release of lien.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(376) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to prescribing regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1624.

§ 47–1624. Transfers of assets—Notice—Portion retained to pay tax—Assessor to examine assets—Issuance of certificate.

No person holding, within the District tangible assets of any resident or nonresident decedent, of the value of $300 or more, shall deliver or transfer the same or any part thereof to any person other than an executor, administrator, or collector of the estate of such decedent appointed by the court having probate jurisdiction, unless notice of the date and place of such intended transfer be served upon the assessor of the District of Columbia at least ten days prior to such delivery or transfer, nor shall any person holding, within the District of Columbia, any assets of a resident or nonresident decedent, of the value of $300 or more, deliver or transfer the same or any part thereof to any person other than an executor, administrator, or collector of the estate of such decedent appointed by such court without retaining a sufficient portion or amount thereof to pay any tax which may be assessed on account of the transfer of such assets under the provisions of sections 47–1601 to 47–1624 without an order from the assessor of the District of Columbia authorizing such transfer. It shall be lawful for the assessor of the District, personally, or by his representatives, to examine said assets at any time before such delivery or transfer. Failure to serve such notice or to allow such examination or to retain as herein required a sufficient portion or amount to pay the taxes imposed by this chapter shall render such person liable to the payment of such taxes. The assessor of the District may issue a certificate authorizing the transfer of any such assets whenever it appears to the satisfaction of said assessor that no tax is due thereon: *Provided, however,* That any corporation, foreign or domestic to the District having outstanding stock or other securities registered in the sole name of a decedent whose estate or any part thereof is taxable under this chapter may transfer the same, without notice to the assessor and without liability for any tax imposed thereon under this chapter, upon the order of an administrator, executor, or collector of the estate of such decedent appointed by the court having probate jurisdiction, or by a trustee appointed under a will filed with the register of wills of the District, or appointed by said court, or his successor approved by said court: *Provided further,* That the lessor of a safe-deposit box standing in the joint names of a decedent and a survivor or survivors may deliver the entire contents of such safe-deposit box to the survivor or survivors, after examination of such contents by the assessor or his representative, without any liability on the part of the said lessor for the payment of such tax. (Aug. 17, 1937, 50 Stat. 687, ch. 690, title V, Art III, § 9, formerly Art. I, § 16; May 16, 1938, 52 Stat. 362, ch. 223, § 5(f), renumbered and amended July 26, 1939, 53 Stat. 1117, ch. 367, title V, § 1; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 158(d)(3), 84 Stat. 576.)

AMENDMENT

1970—Section 158(d)(3) of Act July 29, 1970, Public Law 91–358 amended section (A) by striking out "United States District Court for the District of Columbia" each place it occurs and inserting in lieu thereof "court having probate jurisdiction", and

(B) by striking out "said District Court" and inserting in lieu thereof "such court".

EFFECTIVE DATE OF 1970 AMENDMENT.

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1624.

§ 47–1625. Bureau of Internal Revenue to supply information to Commissioners.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–1628. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–1630. Compromise and settlement of taxes.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 17.—FINANCIAL INSTITUTION, GUARANTY COMPANY, AND PUBLIC UTILITY TAXES

§§ 47–1701 to 47–1709.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 26–610, 47–1203, 47–1213, 47–1303, 47–1304.

Chapter 18.—INSURANCE COMPANIES

§ 47–1801. Licenses—Fee—Term.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–1806.

§ 47–1803. Prosecutions.

All prosecutions for violations of this chapter shall be in the Superior Court of the District of Columbia by the corporation counsel of the District of Columbia or any of his assistants. (Aug. 17, 1937, 50 Stat. 675, ch. 690, title II, § 3; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358, amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

§ 47-1807. Penalty for failure to pay tax.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47-1806.

Chapter 19.—MOTOR FUEL TAX

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 40-103.

§ 47-1901. Rate—Use restricted.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(377 and 378) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under sections 103, 202, 203 and 205, of Pub. L. 89-11, set out as a note to this section in the particulars described in pars. 377 and 378, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 5-316, 40-202, 40-808, 40-809, 47-1902, 47-1903, 47-1910, 47-1911, 47-1913, 47-1915, 47-1916.

§ 47-1902. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-202, 47-1903, 47-1910, 47-1911, 47-1913, 47-1915, 47-1916.

§ 47-1903. Importers—License—Application for—Contents—Fee—Bond—Issuance—Revocation.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(379) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a)(5) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-202, 47-1902, 47-1910, 47-1911, 47-1913, 47-1915, 47-1916.

§ 47-1904. Monthly report to assessor of amount of fuel sold.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-202, 47-1902, 47-1903, 47-1910, 47-1911, 47-1913, 47-1915, 47-1916.

§ 47-1905. Invoices to be rendered by importers to all purchasers except in cases of retail sales.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-202, 47-1902, 47-1903, 47-1908, 47-1910, 47-1911, 47-1913, 47-1915, 47-1916.

§ 47-1906. Tax to be paid to collector not later than twenty-fifth day of next succeeding calendar month.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-202, 47-1902, 47-1903, 47-1910, 47-1911, 47-1913, 47-1915, 47-1916.

§§ 47-1907 to 47-1909.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 40-202, 47-1902, 47-1903, 47-1910, 47-1911, 47-1915, 47-1916.

§ 47-1910. Motor fuel used for any purpose other than motor vehicle—Refund of tax payment.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-202, 47-1901 to 47-1903, 47-1911, 47-1915, 47-1916.

§ 47-1911. Violations—Penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-202, 47-1902, 47-1903, 47-1910, 47-1915, 47-1916.

§ 47-1912. Tax on fuel sold by United States agency in the District of Columbia.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-202, 47-1902, 47-1903, 47-1910, 47-1911, 47-1915, 47-1916.

§ 47-1913. Violations to be prosecuted by corporation counsel.

All prosecution for violations of the provisions of sections 47-1901 to 47-1906 or regulations prescribed thereunder may be in the Superior Court of the District of Columbia, upon information filed by the corporation counsel of the District of Columbia or any of his assistants; and all suits for the collection of any tax or penalty under sections 47-1901 to 47-1906 or such regulations shall be instituted by the corporation counsel or any of his assistants. (Apr. 23, 1924, 43 Stat. 109, ch. 131, § 15; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88-60, § 1; July 29, 1970, Pub. L. 91-358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91-358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11-101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-202, 47-1902, 47-1903, 47-1910, 47-1911, 47-1915, 47-1916.

§ 47-1914. Construction—Not to affect public hackers.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-202, 47-1902, 47-1903, 47-1910, 47-1911, 47-1915, 47-1916.

§ 47-1915. Construction—Personal tax laws not affected.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40-202, 47-1902, 47-1903, 47-1910, 47-1911, 47-1916.

§ 47–1916. Commissioners to make necessary regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(380) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–202, 47–1902. 47–1903, 47–1910, 47–1911, 47–1915.

Chapter 20.—DOG TAX

§ 47–2001. Dog tax.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2006.

§ 47–2002. Collector to furnish metallic tag.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2003, 47–2006.

§ 47–2003. Impounding of dogs found at large.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 21.—PRIVATE EMPLOYMENT AGENCY LICENSES

§ 47–2101. Employment agencies—License required—Definitions.

It shall be unlawful for any person to open, keep, operate, maintain, or carry on any private employment agency without first having obtained a license from the District of Columbia so to do. The fee for such license shall be $100 per annum. Any license may be denied, revoked, or suspended for cause by the said commissioners. A person whose application for a license is denied, or whose license is revoked or suspended by the commissioners may obtain a review of the action of the commissioners in the District of Columbia Court of Appeals in the manner provided by the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510).

* * * * *

(As amended July 29, 1970, Pub. L. 91–358, § 164(p), title I, 84 Stat. 586.)

AMENDMENT

1970—Section 164(p) of Act July 29, 1970, Public Law 91–358 amended section by striking out "sections 11–742, 17–303, 17–304, 17–305(b), 17–306 and 17–307 of the District of Columbia Code" and inserting in lieu thereof "the District of Columbia Administrative Procedure Act (D.C. Code, secs. 1–1501 to 1–1510)".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 47–2102, 47–2105.

§ 47–2102. Bond.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(381) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to determining penal sum of bond to be deposited by applicants, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40–105.

§ 47–2103. Registers.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40–105.

§§ 47–2104 to 47–2106.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 40–105.

§ 47–2107. Inspection.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40–105.

§ 47–2108. False information.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 47–2102.

§ 47–2109. Exceptions from license requirements.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 40–105.

Chapter 22.—PUBLIC AUCTION PERMITS

Sec.
47–2207. Prosecution for violation to be in Superior Court.

§ 47–2201. Public auction—Auction of merchandise without permit from Commissioners prohibited.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2309.

§ 47–2202. Application for permit—Fee—Information to be furnished.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2309.

§ 47–2203. Personal effects, furniture, personal livestock may be sold without permit.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2309.

§ 47–2204. Suspension of license for violations.

The Board of Commissioners of the District of Columbia are hereby vested with authority to temporarily suspend the operation of the license herein provided for whenever they may believe that this chapter, or any part thereof, or regulations made in pursuance thereof, are about to be or are being violated, and they shall thereupon forthwith institute the appropriate proceeding in the Superior Court of the District of Columbia in accordance with this chapter, and in the event that the said violation results in a conviction, then and in that event the license shall be and become null and void, but in the event that the said proceeding shall terminate in favor of the defendant, then and in that event the suspension of said license shall be at an end, and the license shall thereupon be restored and be in full force and effect. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2309.

§ 47–2205. Auction of jewelry, plated wares, prohibited after certain hour.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2309.

§ 47–2206. Misrepresenting merchandise—Prosecution for.

Any person selling or offering for sale any property under the provisions of this chapter shall, in describing the same, be truthful with respect to the character, quality, kind, and description of the same and which, for the purpose hereof, shall be considered as warranties, and any breach of the same shall be punishable by prosecution in the Superior Court of the District of Columbia, as hereinbefore set forth. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 6; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2309.

§ 47–2207. Prosecution for violation to be in Superior Court.

All prosecutions under this chapter shall be in the Superior Court of the District of Columbia upon information by the corporation counsel or one of his assistants. Any person violating any of the provisions of this chapter shall, upon conviction thereof, be punished by a fine of not less than $10 nor more than $200 or imprisonment of not more than sixty days or both, in the discretion of the court. (Sept. 8, 1916, 39 Stat. 847, ch. 473, § 7; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2309.

§ 47–2208. Construction.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2309.

Chapter 23.—GENERAL LICENSE LAW

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 40–903.

§ 47–2301. Licenses required for business or profession—Application—Transfer of license—Signing and sealing.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(382) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to adopting a seal, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907, 47–2344a.

§ 47–2302. Compliance with fire escape laws and regulations required before license is issued.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

NOTES TO DECISIONS

Consent to inspection

The owner of a multiple dwelling structure by applying for license to operate building as apartment house consented to inspection of premises required by this section, and entry into building without warrant did not violate Fourth Amendment right. *J. D. Neuman Properties, Inc.* v. *District of Columbia, Board of Appeals and Review* (D.C. App. 1970, 268 A. 2d 605).

§ 47–2303. Theater licenses—Revocation for failure to comply with regulations for decency.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(383) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to prescribing regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

§ 47–2304. Separate license for each business, trade, or profession by same person—Place of business restricted to that designated in license—Operation under license by others prohibited.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

§ 47–2305. Date and expiration of license—Prorating for late application.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907, 47–2344a.

§§ 47–2306 to 47–2308.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 40–105, 43–907.

§ 47–2309. Auctioneers—Penalty for failure to account.

Auctioneers shall pay a license fee of $5 per annum. No license shall issue hereunder without the approval of the major and superintendent of police. If any licensed auctioneer, his agent or employee, shall convert to his own use in the District of Columbia any goods, wares, merchandise, or personal property of any description, or the proceeds of the same, and shall fail to pay over the avails or proceeds from the sale thereof, less his proper charges, within five days after receiving the money or its equivalent from the purchaser or purchasers of said goods, wares, merchandise, or personal property of any description, and after demand made therefor by the person entitled to receive the same, or his or her duly authorized agent, he shall be deemed guilty of a misdemeanor, and upon information and conviction in the Superior Court of the District of Columbia shall be fined not more than $1,000 or be imprisoned not exceeding six months, or both, in the discretion of the court. Nothing herein contained shall be construed to repeal or alter the provisions of §§ 47–2201 to 47–2208. (July 1, 1902, 32 Stat. 623, ch. 1352, § 7, par. 9; July 1, 1932, 47 Stat. 552, ch. 366; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS

Chief of Police as successor to major and superintendent of police, see note under § 4–103.

CROSS REFERENCES

Conversion by commission merchant, see § 22–1208.

Embezzlement, penalties, see § 22–1206 et seq.

Police supervision of auctioneers of watches and jewelry, see § 4–147.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907, 47–2344a.

§ 47–2310. Barber shops and beauty parlors.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907, 47–2310a.

§ 47–2311. Massage establishments—Turkish, Russian, or medicated baths.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

§§ 47–2312 to 47–2320.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 40–105, 43–907.

§ 47–2321. Bowling alleys—Billiard and pool tables—Games.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

§ 47–2322. Shooting galleries.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

§§ 47–2323 to 47–2327.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 40–105, 43–907.

§ 47–2328. Classification of buildings containing living quarters for licenses—Fees—Buildings exempt from license requirement.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(384) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to classifying buildings, and requiring licenses, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

NOTES TO DECISIONS

Consent to inspection

The owner of a multiple dwelling structure by applying for license under this section to operate building as apartment house consented to inspection of premises required by section 47–2302, and entry into building without warrant did not violate Fourth Amendment right. *J. D. Neuman Properties, Inc.* v. *District of Columbia, Board of Appeals and Review* (D.C. App. 1970, 268 A. 2d 605).

Judicial review

Issues not urged at administrative level may not form the basis for overturning on review a decision denying license to operate multiple dwelling structure as apartment house. *J. D. Neuman Properties, Inc.* v. *District of Columbia, Board of Appeals and Review* (D.C. App. 1970, 268 A. 2d 605).

Violations of regulations

In this case the court held that the fact that there had been Housing Code violations, under process of being corrected, in tenant's apartment at time she executed lease does not render lease invalid. *C. M. Watson* v. *S. Kotler* (D.C. App. 1970, 264 A. 2d 141).

§§ 47–2329, 47–2330.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 40–105.

§ 47–2331. Vehicles for hire—Hackers' licenses—Identification tags on vehicles—Sightseeing vehicles for school children, occasional purposes—Ambulances, private vehicles for funeral purposes—Issuance of licenses—Payment of fees.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(385) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (f) with respect to directing as to the identification tags to be borne by licensed vehicles, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

CODIFICATION

The reference in subsection (f) to sections 40–1001 to 40–1007 is an error. The reference should be to sections 43–201 to 43–209.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–103, 40–105, 40–301, 43–907, 44–301, 47–1914.

NOTES TO DECISIONS

Foreign chartered bus tours

In this case the court concluded that the Washington Metropolitan Area Transit Authority lacked jurisdiction to regulate operation of chartered bus tours which originated and terminated outside the metropolitan area and which provided overnight hotel accommodations for tour patrons who were taken on sight-seeing tours with all passengers departing from and returning to same bus at each stop. *D.C. Transit System, Inc.* v. *Washington Metropolitan Area Transit Commission, et al.* (1969, 420 F. 2d 226, 136 U.S. App. D.C. 384).

Suspension or revocation of hacker's license

In this case the court held that the Hackers' Board may not suspend or revoke a hacker's license unless it concludes after hearing and upon appropriate findings as required by section 1–1509 that a valid regulation promulgated by the District of Columbia Council under section 47–2345(a) prescribing suspension or revocation has been violated, or unless it can show in the record "reliable, probative, and substantial evidence," supporting its own conclusion that suspension or revocation of the particular license will be "in the interest of public decency" or necessary for "the protection of lives, limbs, health, comfort, and quiet of the citizens of the District of Columbia". *G. A. Proctor* v. *Hackers' Board, Government of the District of Columbia* (D.C. App. 1970, 268 A. 2d 267).

Only when the District of Columbia Council promulgates regulation explicitly making violation of public service commission taxicab regulation grounds for suspension or revocation of a hackers' license can such violation constitute the basis for suspension or revocation order by Hackers' License Appeal Board. *Id.*

Since there was no finding by the Hackers' License Appeal Board that hacker had violated valid public service commission taxicab regulation or that suspension of hackers' license was warranted for protection of public health, comfort or in interest of public decency, nor was there probative or substantial evidence in the record upon which such finding could be made, the suspension of license for refusal to transport patron unless he rode in front seat of taxicab was erroneous. *Id.*

§ 47–2332. Rental or leasing of motor vehicle without driver.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

§ 47–2333. Vehicles hauling goods from public space.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907, 47–2331.

§§ 47–2334, 47–2335.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 40–105, 43–907.

§ 47–2336. Sales on streets or public places.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(386) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to regulations governing the conduct of licensed vendors, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

§ 47–2337. Solicitors.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

§ 47–2338. Guides.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(387) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to making regulations for the examination of applicants for licenses, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

§ 47–2339. Secondhand dealers—Classification—Licensing—Stolen property.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(388) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to classifying dealers in secondhand personal property, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

NOTES TO DECISIONS

Estoppel to litigate

The Court held that the District of Columbia was collaterally estopped from relitigating in criminal prosecution the issue of whether art dealer was required to obtain secondhand dealer's license where that issue had been fully litigated before the Board of Appeals and Review and issue decided in favor of dealer. *District of Columbia* v. *P. H. Fisher* (D.C. App. 1969, 258 A. 2d 456).

§ 47–2340. Dealers in dangerous weapons.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(389) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to making and promulgating regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

§ 47–2341. Private detectives.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(390) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (d) with respect to making regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

§§ 47–2342, 47–2343.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 40–105, 43–907.

§ 47–2344. Commissioners may regulate, modify, or eliminate license requirements.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(391) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to requiring a license of other businesses or callings, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

NOTES TO DECISIONS

Violation of regulations

In this case the two home improvement contracts made within three days of each other relating to the same house are unenforceable because unlicensed contractor violated District of Columbia home improvement regulations by accepting from homeowner $3,000 in full payment under the first agreement before completion of work thereunder, and homeowner could recover the $3,000 from contractor. *R. C. Miller* v. *Peoples Contractors, Ltd.* (D.C. App. 1969, 257 A. 2d 476).

§ 47–2344a. Undertakers' licenses—Qualifications—Examination—License without examination—Authority of Commissioners—Appropriations—Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(392 and 393) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (b) and (d)(6) in the particulars described in pars. 392 and 393, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 47–2345. Promulgation of regulations authorized—Suspension or revocation of licenses—Bonding of licensees authorized to collect moneys—Exemptions.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(394, 395 and 396) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section in the particulars described in pars. 394, 395 and 396, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907, 47–2339.

NOTES TO DECISIONS

Constitutionality of regulations

There is a strong presumption of constitutionality afforded to regulations regulating businesses under police power in interest of public safety, and one attacking such regulations on due process grounds carries the heavy burden of showing that the regulation is unreasonable and has no rational relationship to objective sought to be obtained. *F. R. Vanderhoof* v. *District of Columbia* (D.C. App. 1970, 269 A. 2d 112).

Suspension or revocation of hacker's license

In this case the court held that the Hackers' Board may not suspend or revoke a hacker's license unless it concludes after hearing and upon appropriate findings as required by section 1–1509 that a valid regulation promulgated by the District of Columbia Council under section 47–2345(a) prescribing suspension or revocation has been violated, or unless it can show in the record "reliable, probative, and substantial evidence," supporting its own conclusion that suspension or revocation of

the particular license will be "in the interest of public decency" or necessary for "the protection of lives, limbs, health, comfort, and quiet of the citizens of the District of Columbia". *G. A. Proctor* v. *Hackers' Board, Government of the District of Columbia* (D.C. App. 1970, 268 A. 2d 267).

Only when the District of Columbia Council promulgates regulation explicitly making violation of public service commission taxicab regulation grounds for suspension or revocation of a hackers' license can such violation constitute the basis for suspension or revocation order by Hackers' License Appeal Board. *Id.*

Since there was no finding by the Hackers' License Appeal Board that hacker had violated valid public service commission taxicab regulation or that suspension of hackers' license was warranted for protection of public health, comfort or in interest of public decency, nor was there probative or substantial evidence in the record upon which such finding could be made, the suspension of license for refusal to transport patron unless he rode in front seat of taxicab was erroneous. *Id.*

Violation of regulations

In this case the two home improvement contracts made within three days of each other relating to the same house are unenforceable because unlicensed contractor violated District of Columbia home improvement regulations by accepting from homeowner $3,000 in full payment under the first agreement before completion of work thereunder, and homeowner could recover the $3,000 from contractor. *R. C. Miller* v. *Peoples Contractors, Ltd.* (D.C. App. 1969, 257 A. 2d 476).

§ 47–2346. Prosecutions.

Prosecutions for violations of any of the provisions of this chapter, or of any section added hereto from time to time by the commissioners of the District of Columbia, or of any regulation made by the commissioners under authority of this chapter, shall be on information in the Superior Court of the District of Columbia by the corporation counsel of the District of Columbia or any of his assistants. (July 1, 1902, 32 Stat. 628, ch. 1352, § 7, par. 47; July 1, 1932, 47 Stat. 563, ch. 366; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

§ 47–2347. Penalties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

NOTES TO DECISIONS

Estoppel to litigate

The Court held that the District of Columbia was collaterally estopped from relitigating in criminal prosecution the issue of whether art dealer was required to obtain secondhand dealer's license where that issue had been fully litigated before the Board of Appeals and Review and issue decided in favor of dealer. *District of Columbia* v. *P. H. Fisher* (D.C. App. 1969, 258 A. 2d 456).

§§ 47–2348, 47–2349.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 40–105, 43–907.

§ 47–2350. Refund of erroneously-paid fees.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–105, 43–907.

Chapter 24.—SUPERIOR COURT, TAX DIVISION

Sec.

47–2401. Tax appeals—Definitions.
47–2402. Retirement of judge of District of Columbia Tax Court.
47–2403. Appeal from assessment—Hearing and decision.
47–2404. Review by court—Decision of Superior Court, when final—Modification or reversal.
47–2405. Appeals of real estate assessments.
47–2406. Repealed.
47–2407. Refund of erroneous collections.
47–2408. Repealed.
47–2409. Repealed.
47–2410. Certain suits forbidden.
47–2411. Manner of serving notices.
47–2412. Reference by Commissioners to the Superior Court.
47–2413. Overpayments—Refund—Appeal.
47–2414. Repealed.

§ 47–2401. Tax appeals—Definitions.

In the interpretation of this chapter, unless the context indicates a different meaning—

The word "tax" means the tax or taxes mentioned in this chapter.

The word "appeal" means the appeal provided in this chapter.

The word "commissioners" means the commissioners of the District of Columbia or their duly authorized representative or representatives.

The word "District" means the District of Columbia.

The word "person" includes any individual, firm, copartnership, joint adventure, association, corporation (domestic or foreign), trust, estate, or receiver.

The word "court" shall mean the Superior Court of the District of Columbia, unless the context indicates otherwise.

The word "assessor" shall mean the assessor of the District of Columbia.

The words "Board of Equalization and Review" shall mean the Board of Equalization and Review of the District of Columbia. (Aug. 17, 1937, ch. 690, title IX, § 1, as added May 16, 1938, 52 Stat. 370, ch. 223, § 8; July 29, 1970, Pub. L. 91–358, § 161(a)(1), title I, 84 Stat. 579.)

AMENDMENT

1970—Section 161(a)(1) of Act July 29, 1970, Public Law 91–358 amended section (A) by striking out "The word 'Board', means the Board of Tax Appeals for the District of Columbia created by this title.", and

(B) By striking out "The word 'court' shall mean the United States Court of Appeals for the District of Columbia." and inserting in lieu thereof "The word 'court' shall mean the Superior Court of the District of Columbia, unless the context indicates otherwise."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

REDESIGNATION OF DISTRICT OF COLUMBIA TAX COURT

Section 156(h) of Act July 29, 1970, Pub. L. 91–358 provided as follows:

"All other laws of the United States applicable exclusively to the District of Columbia in force on the effective date of this Act in which reference is made to the Board of Tax Appeals for the District of Columbia or to the District of Columbia Tax Court are amended by substituting 'Superior Court of the District of Columbia' for such reference."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–2402. Retirement of Judge of District of Columbia Tax Court.

The judge of the District of Columbia Tax Court may hereafter retire—

(1) after having served as a judge of such court for a period or periods aggregating twenty years or more, whether continuously or not;

(2) after having served as a judge of such court for a period or periods aggregating ten years or more, whether continuously or not, and having attained the age of seventy years; or

(3) after having become permanently disabled from performing his duties, regardless of age or length of service.

Such judge may retire for disability by furnishing to the Commissioners of the District of Columbia a certificate of disability signed by the chief judge of the United States District Court for the District of Columbia. The judge who retires under this section shall receive annually in monthly installments, during the remainder of his life, a sum equal to such proportion of the salary received by such judge at the time of such retirement as a total of his aggregate years of service bears to the period of thirty years, the same to be paid in the same manner as the salary of such judge. In no event shall the sum received by such judge hereunder be in excess of the salary of such judge at the time of such retirement. In computing the years of service under this section, service in the Board of Tax Appeals of the District of Columbia, as heretofore constituted, shall be included whether or not such service be continuous.

The term "retire" as used in this section shall mean and include retirement, resignation, or failure of reappointment upon the expiration of the term of office of incumbent. (Aug. 17, 1937, ch. 690, title IX, § 2, as added May 16, 1938, 52 Stat. 370, ch. 223, § 8, and amended July 26, 1939, 53 Stat. 1108, ch. 367, title IV, § 5(a); Oct. 28, 1949, 63 Stat. 972, ch. 782, title XI, § 1106(a); July 10, 1952, 66 Stat. 547, ch. 649, § 5; July 11, 1955, 69 Stat. 290, ch. 302, § 3; July 2, 1956, 70 Stat. 485, ch. 494, § 1; Aug. 14, 1964, 78 Stat. 431, Pub. L. 88–426, § 306(i)(4); Oct. 17, 1968, Pub. L. 90–579, § 3, 82 Stat. 1119; Apr. 15, 1970, Pub. L. 91–231, § 6(c), 84 Stat. 198; July 29, 1970, Pub. L. 91–358, § 161(a)(2), title I, 84 Stat. 579.)

REFERENCES IN TEXT

Section 156(h) of Act July 29, 1970, Pub. L. 91–358, provided in part that references in laws of the United States applicable exclusively to the District of Columbia in force on the effective date of this Act to the Board of Tax Appeals or to the District of Columbia Tax Court, are amended by substituting "Superior Court of the District of Columbia."

AMENDMENTS

1970—Section 161(a)(2) of Act July 29, 1970, Public Law 91–358 amended section (A) by striking out the first four paragraphs, (B) by striking out "(a)", and (C) by striking out the paragraph designated "(b)".

Section 6(c), act of Apr. 15, 1970, Pub. L. 91–231, amended the first sentence of the second paragraph by striking out "$27,500" and inserting in lieu thereof "$34,000".

1968—Section 3, Pub. L. 90–579, amended the first sentence of the second paragraph by striking out "$23,500" and inserting in lieu thereof "$27,500".

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–231

Section 9(a) of act Apr. 15, 1970, Pub. L. 91–231, provided: "Sections 1—6, inclusive, of this act [section 6 amended sec. 47–2402 and former secs. 11–702(d) and 11–902(d)] shall become effective on the first day of the first pay period which begins on or after December 27, 1969."

EFFECTIVE DATE OF 1970 AMENDMENT BY PUB. L. 91–358

See note preceding section 11–101.

EFFECTIVE DATE OF 1968 AMENDMENT

Section 4, act, Oct. 17, 1968, Pub. L. 90–579, provided: "This Act [Amendments of sections 47–2402; 11–702(d) and 11–902(a) and (d)] shall take effect as of October 1, 1968."

RETIREMENT OF CERTAIN DISTRICT OF COLUMBIA JUDGES

Section 193 of Pub. L. 91–358, provided: (a) The person serving as judge of the District of Columbia Tax Court on the day prior to the effective date of this title may, within sixty days of such date, elect to retain retirement benefits under section 2 of title IX of the District of Columbia Revenue Act of 1937 (D.C. Code, sec. 47–2402), or relinquish such benefits and elect retirement benefits under chapter 15 of title 11 of the District of Columbia Code, as contained in the revision made by part A of this title.

(b)(1) Any judge of the District of Columbia Court of Appeals, the District of Columbia Court of General Sessions, the Juvenile Court of the District of Columbia, or the former District of Columbia Municipal Court of Appeals or Municipal Court, who had retired prior to the effective date of this subsection, may elect to have his retirement salary recomputed and paid in accordance with this subsection. Such election may be made in writing within sixty days after such effective date and shall be filed with the Commissioner of the District of Columbia.

(2) The retirement salary of each judge making such election shall be recomputed in accordance with applicable law then in effect at the time of his retirement, except that in the recomputation of such retirement salary, the salary of the corresponding judicial office on the day immediately following the effective date of this subsection shall be deemed to be the salary which such judge was receiving immediately prior to the date of his retirement.

(3) Each judge who elects recomputation of his retirement salary in accordance with this subsection shall—

(A) deposit in the District of Columbia Judicial Retirement and Survivors Annuity Fund an amount equal to 3½ per centum of his basic salary received for judicial service, with interest at 4 per centum per annum to December 31, 1947, and 3 per centum per annum thereafter, compounded on December 31 of each year; or

(B) have his retirement salary, as recomputed in accordance with this subsection, reduced by 10 per centum of the amount of such deposit remaining unpaid.

(4) The retirement salary of any judge which is recomputed in accordance with this subsection shall be payable only with respect to those months beginning on and after the first day of the first month following the date of the election by such judge under this subsection.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–2403. Appeal from assessment—Hearing and decision.

Any person aggrieved by any assessment by the District of any personal-property, inheritance, estate, business-privilege, gross-receipts, gross-earnings, insurance premiums, or motor-vehicle-fuel tax or taxes, or penalties thereon, may within six months after payment of the tax together with penalties and interest assessed thereon, appeal from the assessment to the Superior Court of the District of Columbia. The mailing to the taxpayer of a statement of taxes due shall be considered notice of assessment with respect to the taxes. The court shall hear and determine all questions arising on appeal and shall make separate findings of fact and conclusions of law, and shall render its decision in writing. The court may affirm, cancel, reduce, or increase the assessment. (Aug. 17, 1937, ch. 690, title IX, § 3, as added May 16, 1938, 52 Stat. 371, ch. 223, § 8, and amended July 26, 1939, 53 Stat. 1108, ch. 367, title IV, § 5(b); July 10, 1952, 66 Stat. 543, ch. 649, § 3(a); July 29, 1970, Pub. L. 91–358, title I, § 161(a)(3), 84 Stat. 579.)

AMENDMENTS

1970—Section 161(a)(3) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the Code, and supplement III, thereto.

1952—Act July 10, 1952, deleted the provision which required protest to the collector of taxes of the District of Columbia to be in writing.

1939—Act July 26, 1939, including assessment of motor-vehicle-fuel taxes.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–603–1, 45–734, 47–709 to 47–712, 47–716, 47–801e, 47–1215, 47–1531, 47–1534, 47–1593, 47–2405, 47–2413, 47–2618.

NOTES TO DECISIONS

Jurisdiction

Letter which was signed by executor of estate and specifically stated that it was sent as agent for residuary legatee and that legatee wished to appeal inheritance tax assessment contained statement "sufficient to indicate that court has jurisdiction of the subject" within rule authorizing informal petitions consisting of letter addressed to the court and signed by taxpayer if it contains such statements. *District of Columbia* v. *M. W. Payne* (1966, 374 F. 2d 261, 126 U.S. App. D.C. 47).

A letter which was signed by officer of executor of decedent's estate and which specifically stated that it was sent as agent for residuary legatee and that the legatee wished to appeal inheritance tax assessment substantially complied with District of Columbia Tax Court rule providing for informal petition consisting of letter addressed to court and actually signed by taxpaper if it contains statements sufficient to indicate that court has jurisdiction of subject. *Id.*

§ 47–2404. Review by court—Decision of Superior Court, when final—Modification or reversal.

(a) Decisions of the Superior Court in civil tax cases are reviewable in the same manner as other decisions of the court in civil cases tried without a jury. The District of Columbia Court of Appeals has the power to affirm, modify, or reverse the decision of the Superior Court with or without remanding the case for hearing.

(b) The decision of the Superior Court shall become final (1) upon the expiration of the time allowed for filing a petition for review, if no petition is filed within that time; (2) upon the expiration of time allowed for filing a petition for certiorari if the decision of the Superior Court has been affirmed on appeal, the appeal has been dismissed, or no petition for certiorari has been filed; (3) upon denial of a petition for certiorari if the decision of the Superior Court has been affirmed on appeal or the appeal has been dismissed; or (4) upon the expiration of thirty days from the date of issuance of the mandate of the Supreme Court, if that Court has affirmed the decision of the Superior Court or dismissed the petition for review.

(c) If the Supreme Court directs that the decision of the Superior Court be modified or reversed, the decision rendered in accordance with the Supreme Court's mandate shall become final upon the expiration of thirty days from the time it was rendered unless within that time either the District or the taxpayer has instituted proceedings to have the decision corrected to accord with the mandate, in which event the decision of the Superior Court shall become final when so corrected.

(d) If the decision of the Superior Court is modified or reversed by the District of Columbia Court of Appeals and if (1) the time allowed for filing a petition for certiorari has expired and no such petition has been filed, (2) the petition for certiorari has been denied, or (3) the decision of the District of Columbia Court of Appeals has been affirmed by the Supreme Court, then the decision of the Superior Court rendered in accordance with the mandate of the District of Columbia Court of Appeals shall become final upon the expiration of thirty days from the time the decision of the Superior Court was rendered, unless within that time either the District or the taxpayer has instituted proceedings to have the decision corrected so that it will accord with the mandate, in which event the decision of the Superior Court shall become final when corrected.

(e) If the Supreme Court orders a rehearing, or if the case is remanded by the District of Columbia Court of Appeals for rehearing and if (1) the time allowed for filing of a petition for certiorari has expired and no petition has been filed; (2) the petition for certiorari has been denied; or (3) the decision of the District of Columbia Court of Appeals has been affirmed by the Supreme Court, then the decision of the Superior Court rendered upon such rehearing shall become final in the same manner as though no prior decision had been rendered.

(f) As used in this section the term "mandate", in case a mandate has been recalled prior to the expiration of thirty days from the date of issuance, means the final mandate. (Aug. 17, 1937, ch. 690, title IX, § 4, as added May 16, 1938, 52 Stat. 371, ch. 223, § 8, and amended June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 10, 1952, 66 Stat. 544, ch. 649, § 3(b); July 29, 1970, Pub. L. 91–358, title I, § 161(a)(4), 84 Stat. 579.)

AMENDMENTS

1970—Section 161(a)(4) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

1952—Subsec. (a) amended by act July 10, 1952, which substituted "the court shall have the power to affirm, modify, or reverse the decision of the Board" for "the court shall have the power to affirm, or if the decision of the Board is not in accordance with law, to modify or reverse the decision of the Board", "decisions of the Board in the same manner and to the same extent as decisions of the United States District Court for the District of Columbia in civil actions tried without a jury; and" for "decisions of the Board, and", and "title 28, United States Code, section 1254" for "section 347, Title 28, U.S. Code", and eliminated provisions which stated that the findings of fact by the Board shall have the same effect as a finding of fact by an equity court or a verdict of a jury.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CHANGE OF NAME

Act June 25, 1948, eff. Sept. 1, 1948, as amended by act May 24, 1949, substituted "United States District Court for the District of Columbia" for "District Court of the United States for the District of Columbia."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–603–1, 45–734, 47–709 to 47–112, 47–716, 47–801e, 47–1215, 47–1531, 47–1534, 47–1593, 47–2405, 47–2413, 47–2618.

NOTES TO DECISIONS

Tax Court's findings

District of Columbia Tax Court's findings must be accepted by appellate court unless they are clearly erroneous. *District of Columbia* v. *L. Neyman* (1969, 417 F. 2d 1140, 135 U.S. App. D.C. 193).

§ 47–2405. Appeals of real estate assessments.

Any person aggrieved by any assessment, equalization, or valuation made pursuant to sections 47–708 and 47–709, may within six months after October 1 of the year in which such assessment, equalization, or valuation is made, appeal from such assessment, equalization, or valuation in the same manner and to the same extent as provided in sections 47–2404 and 47–2413: *Provided, however,* That such person shall have first made his complaint to the Board of Equalization and Review respecting such assessment as herein provided, except that, in case of increase of valuation of real property over that for the immediately preceding year, where no notice in writing of such increase of valuation is given the taxpayer prior to March 1 of the particular year, no such complaint shall be required for appeal.

Any person aggrieved by any assessment or valuation made in pursuance of section 47–710 may, within six months after October 15 of the year in which said valuation or assessment is made, appeal from such assessment or valuation in the same manner and to the same extent as provided in sections 47–2404 and 47–2413: *Provided, however,* That if the taxpayer shall be notified in writing not later than September 1 of a particular year of the valuation of the real estate valued in accordance with section 47–710, such taxpayer shall first make a complaint to the Board of Equalization and Review respecting such assessment as herein provided.

Any person aggrieved by any assessment made in pursuance of section 47–711 may, within six months after April 15 of the year in which such assessment is made, appeal from such assessment in the same manner and to the same extent as provided in sections 47–2404 and 47–2413: *Provided, however,* That if the taxpayer shall be notified in writing not later than March 1 of a particular year of the valuation of the real estate valued in accordance with section 47–711, such taxpayer shall first make a complaint to the Board of Equalization and Review respecting such assessment as herein provided.

Any person aggrieved by any reassessment made in pursuance of section 47–712, may within six months after notice of said reassessment, appeal from said reassessment in the same manner and to the same extent as provided in sections 47–2403, 47–2404.

Any person aggrieved by a reassessment or redistribution made pursuant to section 47–716, may within six months after notice of such reassessment or redistribution, appeal from such reassessment or redistribution in the same manner and to the same extent as provided in sections 47–2403, 47–2404. (Aug. 17, 1937, ch. 690, title IX, § 5, as added May 16, 1938, 52 Stat. 372, ch. 223, § 8, and amended July 26, 1939, 53 Stat. 1109, ch. 367, title IV, § 5(b); July 10, 1952, 66 Stat. 544, ch. 649, § 3(c); July 29, 1970, Pub. L. 91–358, title I, § 161(a)(5), 84 Stat. 580.)

CODIFICATION

The five paragraphs of this section comprise, respectively, the last sentences of subsecs. (a), (b), (c), (d), and (e) of section 5 of the act Aug. 17, 1939, title IX. Such section 5 is classified in its entirety as follows: subsection (a) to sections 47–708 and 47–709; subsection (b) to section 47–710; subsection (c) to section 47–711; subsection (d) to section 47–712; and subsection (e) to section 47–716.

AMENDMENT

1970—Section 161(a)(5) of Act July 29, 1970, Public Law 91–358 amended section by striking out "ninety days" wherever it appears and inserting in lieu thereof "six months".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS

Composition and functions of Board of Equalization and Review, see note under § 47–604.

§ 47–2406. Repealed. July 29, 1970, Pub. L. 91–358, § 161(a)(6), title I, 84 Stat. 580.

Section being section 6 of Act Aug. 17, 1937, ch. 690, title IX, as added May 16, 1938, 52 Stat. 374, ch. 223, § 8, provided for the right of appeal from the imposition of a tax involuntarily paid.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

§ 47–2407. Refund of erroneous collections.

Any sum finally determined by the Superior Court to have been erroneously paid by or collected from the taxpayer shall be refunded by the District to the taxpayer from its annual appropriation for refunding erroneously paid taxes in said District. (Aug. 17, 1937, ch. 690, title IX, § 7, as added May 16, 1938, 52 Stat. 374, ch. 223, § 8; July 29, 1970, Pub. L. 91–358, title I, § 156(g), 84 Stat. 574.)

AMENDMENT

1970—Section 156(g) of Act July 29, 1970, Public Law 91–358, amended section by striking out "the Board" and inserting in lieu thereof "the Superior Court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 40–603–1, 45–734, 47–1215, 47–1531, 47–1534, 47–1593, 47–2618.

§§ 47–2408, 47–2409. Repealed. July 29, 1970, Pub. L. 91–358, § 161(a)(6), title I, 84 Stat. 580.

Sections being sections 8 and 9 of Act Aug. 17, 1937, ch. 690, title IX, as added May 16, 1938, 52 Stat. 374, § 8, contained provisions authorizing the board to adopt rules of procedure and summon witnesses and take testimony.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

§§ 47–2410, 47–2411.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 40–603–1, 45–734, 47–1215, 47–1531, 47–1534, 47–1593, 47–2618.

§ 47–2412. Reference by Commissioners to the Superior Court.

In any matter affecting taxation, the determination of which is by law left to the discretion of the commissioners, the commissioners may, if they so elect, refer such matter to the Superior Court to make findings of fact and submit recommendations, such findings of fact and recomendations, if any, to be advisory only and not binding on the commissioners, and shall be without prejudice to the commissioners to make such further and other inquiry and investigation concerning such matter as they in their discretion shall consider necessary or advisable. (Aug. 17, 1937, ch. 690, title IX, § 13, as added July 26, 1939, 53 Stat. 1110, ch. 367, title IV, § 5(c); July 29, 1970, Pub. L. 91–358, title I, § 156(g), 84 Stat. 574.)

AMENDMENT

1970—Section 156(g) of Act July 29, 1970, Public Law 91–358, amended section by striking out "the Board" and inserting in lieu thereof "the Superior Court".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–1531, 47–1534.

§ 47–2413. Overpayments—Refund—Appeal.

(a) Where there has been an overpayment of any tax, the amount of the overpayment shall be refunded to the taxpayer. No refund (other than inheritance and estate taxes) shall be allowed after two years from the date the tax is paid unless the taxpayer files a claim before the expiration of that period. The amount of refund of taxes (other than inheritance and estate taxes) shall not exceed the portion of the tax paid during the two years immediately preceding the filing of the claim or, if no claim is filed, then the two years immediately preceding the allowance of the refund. No refund of inheritance and estate taxes shall be allowed after three years from the date the tax is paid unless the taxpayer files a claim before the expiration of that period. The amount of refund of inheritance and estate taxes shall not exceed the portion of the tax paid during the three years immediately preceding the filing of the claim or, if no claim is filed, then during the three years immediately preceding the allowance of the refund. Every claim for refund must be in writing under oath, must state the specific grounds on which it is founded, and must be filed with the Commissioner. If the Commissioner disallows all or any part of the refund claim, he shall notify the taxpayer by registered or certified mail. After receiving notice of disallowance, if the claim is acted upon within six months of filing, or after the expiration of six months from the date of filing if the claim is not acted upon, the taxpayer may appeal as provided in sections 47–2403 and 47–2404 of this title. This subsection does not apply to real estate taxes and it does not apply to taxes imposed by the District of Columbia Income Tax Act, by the District of Columbia Income and Franchise Tax Act of 1947, or by titles I and II of the District of Columbia Revenue Act of 1949, refunds of which are otherwise provided by law.

(b) In any proceeding under this title the Superior Court has jurisdiction to determine whether there has been any overpayment of tax and to order that any overpayment be credited or refunded to the taxpayer, if a timely refund claim has been filed.

(c) Any other provision of law to the contrary notwithstanding, if it is determined by the Commissioner or by the Superior Court that there has been an overpayment of any tax, whether as a deficiency or otherwise, interest shall be allowed and paid on the overpayment at the rate of 4 per centum per annum from the date the overpayment was paid until the date of refund, but with respect to that part of any overpayment which was not assessed and paid as a deficiency or as additional tax interest shall be allowed and paid only from the date of filing a claim for refund or a petition to the Superior Court as the case may be.

(d) For purposes of this section, any interest or penalties paid by the taxpayer in connection with an overpayment of tax shall be deemed to be a part of the overpayment of tax. (Aug. 17, 1937, ch. 690, title IX, § 14, as added July 10, 1952, 66 Stat. 546, ch. 649, § 4, and amended June 11, 1960, 74 Stat. 204, Pub. L. 86–507, § 1(56); June 27, 1960, 74 Stat. 224, Pub. L. 86–528, § 1; July 29, 1970, Pub. L. 91–358, title I, § 161(a)(7), 84 Stat. 580.)

REFERENCES IN TEXT

The District of Columbia Income Tax Act and the District of Columbia Income and Franchise Tax Act of 1947 are set out in title 47, ch. 15, titles I and II of the District of Columbia Revenue Act of 1949, are set out as title 47, chapters 26 and 27.

AMENDMENTS

1970—Section 161(a)(7) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

1960—Subsec. (a) amended by act June 27, 1960, to increase the period for refund of estate and inheritance taxes from two years to three years from the date the tax is paid.

Subsec. (a) amended by act June 11, 1960, which inserted words "or by certified mail" following "registered mail."

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CROSS REFERENCE

Certified mail receipts as prima facie evidence of delivery, see § 14–506.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 45–735, 47–2405.

§ 47–2414. Repealed. July 29, 1970, Pub. L. 91–358, § 161(j), title I, 84 Stat. 582.

Section, Act of July 10, 1952, 66 Stat. 547, ch. 649, § 7, dealt with the reestablishment of the Board of Tax Appeals.

EFFECTIVE DATE OF REPEAL

See note preceding section 11–101.

Chapter 25.—MISCELLANEOUS PROVISIONS

§ 47–2501. Authorization for advance of funds by Secretary of Treasury.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–2501a. Annual payment by the United States—Appropriations.

For the fiscal year ending June 30, 1971, and for each fiscal year thereafter, there is authorized to be appropriated, as the annual payment by the United States toward defraying the expenses of the government of the District of Columbia, not to exceed $126,000,000 which shall be credited to the general fund of the District of Columbia. (July 16, 1947, 61 Stat. 361, ch. 258, Art. VI, § 1; May 18, 1954, 68 Stat. 113, ch. 218, title VII, § 701; Sept. 30, 1966, 80 Stat. 857, Pub. L. 89–610, title V, § 501; Nov. 3, 1967, Pub. L. 90–120, title I, § 101, 81 Stat. 339; Aug 2, 1968, Pub. L. 90–450, title I, § 101, 82 Stat. 612; Oct. 31, 1969, Pub. L. 91–106, title VII, § 701, 83 Stat. 180; Jan. 5, 1971, Pub. L. 91–650, title I, § 101, 84 Stat. 1930.)

AMENDMENTS

1971—Section 101 of act Jan. 5, 1971, Pub. L. 91–650, amended section by striking out "1970" and inserting "1971" and by striking out "$105,000,000" and inserting "$126,000,000".

1969—Act Oct. 31, 1969, Pub. L. 91–106, § 701, amended section by striking out "June 30, 1969" and inserting "June 30, 1970" and by striking out "the sum of $90,000,000" and inserting "not to exceed $105,000,000".

1968—Section 101, Pub. L. 90–450, amended section by striking out "June 30, 1968" and inserting in lieu thereof "June 30, 1969" and by striking out "$70,000,000" and inserting in lieu thereof "$90,000,000".

1967—Section 101, Pub. L. 90–120, amended section by striking out, "June 30, 1967" and inserting in lieu thereof "June 30, 1968" and by striking out "$60,000,000" and inserting in lieu "$70,000 000".

SEPARABILITY, AUTHORITY OF COMMISSIONER AND DISTRICT COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

Sections 801–803 of act Jan. 5, 1971, Pub. L. 91–650, provided:

SEC. 801. If any provision of this act, or the application thereof to any person or circumstances, is held invalid, the remainder of this act, and the application of such provision to other persons or circumstances shall not be affected thereby.

SEC. 802. Nothing in this act, or any amendments made by this act, shall be construed so as to affect the authority vested in the Commissioner of the District of Columbia or the authority vested in the District of Columbia Council by Reorganization Plan Numbered 3 of 1967. The performance of any function vested by this act in the Commissioner of the District of Columbia or in any office or agency under his jurisdiction and control, or in the District of Columbia Council, may be delegated by the Commissioner or Council, as the case may be, in accordance with the provisions of such plan.

SEC. 803. (a) The repeal or amendment by this act of any provision of law shall not affect any other provision of law, any act done or any right accrued or accruing under such repealed or amended law, or any suit or proceeding had or commenced in any civil cause before repeal or amendment of such law; but all rights and liabilities under such repealed or amended laws shall continue, and may be enforced in the same manner and to the same extent, as if such repeal or amendment had not been made.

(b) In the case of any offense committed or penalty incurred under any provision of law repealed or amended by this act such offense may be prosecuted and punished and such penalty may be enforced in the same manner and with the same effect as if this act had not been enacted.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

Section 804, Pub. L. 91–106, provided: "Except as otherwise provided in this title [title VIII], nothing in this Act [Pub. L. 91–106], or any amendments made by this Act [Pub. L. 91–106], shall be construed to affect the authority vested in the Commissioner of the District of Columbia or the authority vested in the District of Columbia Council by Reorganization Plan Numbered 3 of 1967. The performance of any function vested by this Act [Pub. L. 91–106] in the Commissioner of the District of Columbia or in any office or agency under his jurisdiction and control, or in the District of Columbia Council, may be delegated by the Commissioner or by the Council, as the case may be, in accordance with the provisions of such Plan. [For classification of provisions of this Act (Pub. L. 91–106) see tables.]"

Section 805 of Pub. L. 91–106 provided:

"(a) The repeal or amendment by this Act [Act, Pub. L. 91–106] of any provision of law shall not affect any other provision of law, or any act done or any right accrued or accruing under such repealed or amended law, or any suit or proceeding had or commenced in any civil cause before repeal or amendment of such law; but all rights and liabilities under such repealed or amended law shall continue, and shall be enforced in the same manner and to the same extent, as if such repeal or amendment had not been made.

"(b) In the case of any offense committed or penalty incurred under any provision of law repealed or amended by this Act [Act, Pub. L. 91–106], such offense may be prosecuted and punished and such penalty may be enforced in the same manner and with the same effect as if this Act [Act, Pub. L. 91–106] has not been enacted. [This act is classified to this section and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act.]"

LIMITATION ON APPROPRIATIONS

Section 803 of Pub. L. 91–106, provided: "No funds may be appropriated for any fiscal year under article VI of the District of Columbia Revenue Act of 1947 (D.C. Code, secs. 47–2501a—47–2501b) until the President of the United States has reported to the Congress that (1) the District of Columbia government has begun work on each of the projects listed in section 23(b) (Sec. 7–135 note) of the Federal-Aid Highway Act of 1968 and has committed itself to complete those projects, or (2) the District of Columbia government has not begun work on each of those projects, or made or carried out that commitment, solely because of a court injunction issued in response to a petition filed by a person other than the District of Columbia or any agency, department, or instrumentality of the United States."

SHORT TITLE

The enacting clause of act Jan. 5, 1971, Pub. L. 91–650, provided: "That this Act (classified to this and other sections of titles 1, 5, 7, 9, 25, 29, 31, 33, 36, 43, and 47 of the D.C. Code; see Tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1970'."

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

The enacting clause of Act Aug. 2, 1968, Pub. L. 90–450, provided: That this Act [Amending sections 25–107, 25–115(a), 47–1567b(a), 47–1571a, 47–1574b, 47–1586f(a)(4), 47–1589(b), 47–2501a, 47–2601, 47–2602, 47–2605, 47–2701,

and 47–2702 and enacting sections 31–1118 and 47–145] may be cited as the "District of Columbia Revenue Act of 1968".

Section 1, act Nov. 3, 1967, Pub. L. 90–120 provided: "That this Act [amending section 47–2501a, subsection 9–220(b), repealing subsection (f) of section 9–220 and enacting section 1–320] may be cited as the 'District of Columbia Federal Payment Authorization and Borrowing Authority Act of 1967.' "

SPECIAL APPROPRIATIONS FOR FISCAL YEAR 1970

Section 702, Pub. L. 91–106 provided: For the fiscal year ending June 30, 1970, there is authorized to be appropriated to the District of Columbia, in addition to any other amounts authorized to be appropriated to the District of Columbia for such fiscal year, not to exceed $5,000,000 to enable it to undertake new law enforcement programs authorized by law after the date of the enactment of this Act or to otherwise increase the effectiveness of law enforcement in the District of Columbia.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 9–220.

§ 47–2502. Regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(397) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 47–2504. Divulging of information obtained from Bureau of Internal Revenue unlawful—Penalties.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 26.—GROSS SALES TAX

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in sections 47–2701, 47–2712.

§ 47–2601. Definitions.

* * * * *

7. "Food" means cereals and cereal products; milk and milk products, including ice cream; meat and meat products; fish and fish products; eggs and egg products; vegetables and vegetable products; fruit, fruit products, and fruit juices; soft drinks; spices and salt; flavoring extracts and condiments; sugar and sugar products; coffee and coffee substitutes; tea; cocoa and cocoa products; and ice. The word "food" shall not include spiritous or malt liquors, beer, or wines.

* * * * *

14. (a) "Retail sale" and "sale at retail" mean the sale in any quantity or quantities of any tangible personal property or service taxable under the terms of this chapter. Said term shall mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include but shall not be limited to the following:

* * * * *

(6) The sale or charges for possession or use of any article of tangible personal property granted under a lease or contract, regardless of the length of time of such lease or contract or whether such lease or contract is oral or written; in such event, for the purposes of this chapter, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rental paid: *Provided, however,* That the gross proceeds from the rental of films, records or any type of sound transcribing to theaters and radio and television broadcasting stations shall not be considered a retail sale.

(7)(A) The sale of or charges to subscribers for local telephone service. The inclusion of such sales and charges in the definition of the terms "retail sale" and "sale at retail" shall not authorize any tax to be imposed under this title on so much of any amount paid for the installation of any instrument, wire, pole, switchboard, apparatus, or equipment as is properly attributable to such installation.

(B) The term "local telephone service" means—

(i) the access to a local telephone system, and the privilege of telephonic quality communication with substantially all persons having telephone or radio telephone stations constituting a part of such local telephone system, and

(ii) any facility or service provided in connection with a service described in clause (i) of this subparagraph. The term "local telephone service" does not include any service which is a "toll telephone service" or a "private communication service" as defined in subparagraphs (C) and (D).

(C) The term "toll telephone service" means—

(i) a telephonic quality communication for which (a) there is a toll charge which varies in amount with the distance and elapsed transmission time of each individual communication and (b) the charge is paid within the United States, and

(ii) a service which entitles the subscriber, upon payment of a periodic charge (determined as a flat amount or upon the basis of total elapsed transmission time), to the privilege of an unlimited number of telephonic communications to or from all or a substantial portion of the persons having telephone or radio telephone stations in a specified area which is outside the local telephone system area in which the station provided with this service is located.

(D) The term "private communication service" means—

(i) the communication service furnished to a subscriber which entitles the subscriber—

(a) to exclusive or priority use of any communication channel or groups of channels, or

(b) to the use of an intercommunication system for the subscriber's stations,

regardless of whether such channel, or groups of channels, or intercommunication system may be connected through switching with a service described in subparagraph (B) or (C),

(ii) switching capacity, extension lines and stations, or other associated services which are provided in connection with, and are necessary or unique to the use of, channels, or systems described in clause (i) of this subparagraph, and

(iii) the channel mileage which connects a telephone station located outside a local telephone system area with a central office in such local telephone system,

except that such term does not include any communication service unless a separate charge is made for such service.

(8) The sale of or charges for admission to public events, including movies, musical performances, exhibitions, circuses, sporting events, and other shows or performances of any type or nature, except that any casual or isolated sale of or charge for admission made by a semipublic institution not regularly engaged in making such sales or charges shall not be considered a retail sale or sale at retail.

(9) The sale of or charges for the service of repairing, altering, mending, or fitting tangible personal property, or applying or installing tangible personal property as a repair or replacement part of other tangible personal property, whether or not such service is performed by other means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction with such service.

(10) The sale of or charges for copying, photocopying, reproducing, duplicating, addressing, and mailing services and for public stenographic services.

(11) The sale of or charges for the service of laundering, dry cleaning, or pressing of any kind of tangible personal property, except when such service is performed by means of self-service, coin-operated equipment.

(b) The term "retail sale" and "sale at retail" shall not include the following:

(1)(A) Sales of transportation and communication services other than sales of local telephone service.

(B) Sales of local telephone service rendered by means of a coin-operated telephone available to the public; except that where such coin-operated telephone service is furnished for a guaranteed amount, the amounts paid under such guarantee plus any fixed monthly or other periodic charge shall be subject to the tax imposed on local telephone service by this title.

(2) Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made, except as otherwise provided in paragraph 14(a).

(3) Any sale in which the only transaction in the District is the mere execution of the contract of sale and in which the tangible personal property sold is not in the District at the time of such execution: *Provided, however,* That nothing contained in this subsection shall be construed to be an exemption from the tax imposed under chapter 27 of this title.

(4) Sales to a common carrier or sleeping-car company by a corporation all of whose capital stock is owned by one or more common carriers or sleeping-car companies of tanglible personal property, procured or acquired by such corporation outside the District, which consists of repair or replacement parts used for the maintenance or repair of any train operating principally without the District in the course of interstate commerce, or commerce between the District and a State, provided such sales are made in connection with the furnishing of terminal services pursuant to a written agreement entered into before January 1, 1963.

* * * * *

16(b)(1)(2) * * *

(3) The amount separately charged for labor or services rendered in installing or applying the property sold, except as provided in paragraph 14(a).

* * * * *

(As amended Aug. 2, 1968, Pub. L. 90–450, title III, §§ 301, 302, 303, 82 Stat. 613; Oct. 31, 1969, Pub. L. 91–106, title I, §§ 101, 102, 103, 83 Stat. 169; Jan. 5, 1971, Pub. L. 91–650, title II, § 201(a)(1), 84 Stat. 1932.)

AMENDMENTS

1971—Section 201(a)(1) of act Jan. 5, 1971, Pub. L. 91–650, repealed the second proviso in par. 14 (a)(6) which read: "*Provided further,* That the gross proceeds from the rental of textiles, the essential part of which rental includes recurring service of laundering or cleaning thereof, shall not be considered a retail sale".

1969—Act Oct. 31, 1969, Pub. L. 91–106, secs. 101, 102 and 103, amended section as follows:

(1) Added pars. (8), (9), (10), and (11) to paragraph 14(a);

(2) Struck out existing par. (1) of 14(b) which read: "Sales of tickets for admission to places of amusement and sports" and is no longer included in the definition of "retail sale" and "sale at retail";

(3) Renumber par. 14(b)(2) as (1), 14(b)(3) as (2) and adding at the end of that par. the words "except as otherwise provided in subsection (a) [14(a)] of this section." and renumbering 14(b) (4) and (5) as 14(b) (3) and (4);

(4) Amending par. 16(b)(3) to read as above set out. Par. 16(b)(3) read before the amendment as follows:

(3) "The amount charged for labor or services rendered in installing or applying the property sold."

1968—Section 301, Pub. L. 90–450, amended par. 7 of this section by striking out ": *Provided, however,* That the word 'food' shall not include spiritous or malt liquors and beer" and inserting after the period at the end of the paragraph the following: "The word 'food' shall not include spiritous or malt liquors, beer, or wines."

Section 302, Pub. L. 90–450, amended par. 14(a) by adding thereto subparagraph 7(A), (B), (C), (D).

Section 303, Pub. L. 90–450, amended par. 14(b)(2) to read as above set out. The amendment resulted in the addition of the phrase "other than sales of local telephone service" to par. 14(b)(2)(A) and in the addition of the matter set out as 14(b)(2)(B).

EFFECTIVE DATE OF 1969 AMENDMENTS

Act Oct. 31, 1969, Pub. L. 91–106, title I, § 111, provided: The amendments made by this title [amendments of §§ 47–2601, 47–2602, 47–2604, 47–2605, 47–2624, 47–2701, and 47–2702) shall take effect on the first day of the first month which begins on or after the thirtieth day after the date of enactment of this Act. [Oct. 31, 1969.]

EFFECTIVE DATE OF 1968 AMENDMENTS

Section 308, act Aug. 2, 1968, Pub. L. 90–450, provided: "Except as provided in section 305(b), [relating to par. (d) of section 47–2605] the amendments made by this title [amendments of sections 47–2601, 47–2602, 47–2605, 47–2701 and 47–2702] shall take effect on the first day of the first month which begins on or after the thirtieth day after the date of enactment of this Act. The imposi-

tion of sales tax on local telephone service shall be applicable to the sales price or charge made by a vendor for local telephone service as stated on the bills rendered to the purchaser by the vendor on and after such effective date."

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

The enacting clause of act Aug. 2, 1968, Pub. L. 90–450, provided: That this Act [Amending sections 25–107, 25–115(a), 47–1567b(a), 47–1571a, 47–1574b, 47–1586f(a)(4), 47–1589(b), 47–2501a, 47–2601, 47–2602, 47–2605, 47–2701, and 47–2702 and enacting sections 31–1118 and 47–145] may be cited as the "District of Columbia Revenue Act of 1968".

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2413, 47–2605.

§ 47–2602. Imposition of tax.

A tax is imposed upon all vendors for the privilege of selling at retail certain tangible personal property and for the privilege of selling certain selected services (defined as "retail sale" and "sale at retail" in this chapter). The rate of such tax shall be 4 per centum of the gross receipts from sales of or charges for such tangible personal property and services, except that—

(1) the rate of tax shall be 2 per centum of the gross receipts from (A) sales of food for human consumption off the premises where such food is sold, (B) sales of or charges for the services described in paragraph (11) of paragraph 14(a) of section 47–2601, (C) sales of medicines, pharmaceuticals, and drugs not made on prescriptions of duly licensed physicians, surgeons, or other general or special practitioners of the healing art, and (D) charges for rental of textiles if the essential part of the rental includes recurring services of laundering or cleaning of the textiles;

(2) the rate of tax shall be 5 per centum of the gross receipts from sales of or charges for any room or rooms, lodgings, or accommodations, furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients; and

(3) the rate of tax shall be 5 per centum of the gross receipts from sales of (A) spiritous or malt liquors, beer, and wines, and (B) food for human consumption other than off the premises where such food is sold.

(May 27, 1949, 63 Stat. 115, ch. 146, title I, § 125; May 18, 1954, 68 Stat. 117, ch. 218, title XIII, § 1303; Mar. 2, 1962, 76 Stat. 10, Pub. L. 87–408, § 101(a); Sept. 30, 1966, 80 Stat. 856, Pub. L. 89–610, title III, § 301(a); Aug. 2, 1968, Pub. L. 90–450, title III, § 304, 82 Stat. 614; Oct. 31, 1969, Pub. L. 91–106, title I, § 104, 83 Stat. 170; Jan. 5, 1971, Pub. L. 91–650, title II, § 201(a)(2), 84 Stat. 1932.)

AMENDMENTS

1971—Section 201(a)(2) of act Jan. 5, 1971, Pub. L. 91–650, amended clause (1) by striking out "and" immediately preceding "(C)" and by striking out the semicolon and inserting in lieu thereof the following: ", and (D) charges for rental of textiles if the essential part of the rental includes recurring services of laundering or cleaning of the textiles;".

1969—Act Oct. 31, 1969, Pub. L. 91–106, § 104 amended section to read as above set out. Prior to this, amended section read as follows: "A tax is imposed upon all vendors for the privilege of selling at retail certain tangible personal property and for the privilege of selling certain selected services (defined as 'sales at retail' in this chapter). The rate of such tax shall be 4 per centum of the vendor's gross receipts from the sale of such tangible personal property and services, except that the rate of tax with respect to sales or charges for any room or rooms, lodgings, or accommodations, furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients, shall be 5 per centum of the gross receipts from such sales or charges, and the rate of tax with respect to sales of food for human consumption off the premises where such food is sold shall be 1 per centum of the gross receipts from such sales."

1968—Section 304, Pub. L. 90–450, amended the section to read as above set out. The amendment resulted in a rearrangement of language and an increase of the tax on the sale of tangible personal property and services from 3 to 4 percent.

EFFECTIVE DATE OF 1969 AMENDMENTS

See § 111 of Pub. L. 91–106, set out as a note to sec. 47–2601.

EFFECTIVE DATE OF 1968 AMENDMENTS

See § 308 of Pub. L. 90–450, set out as a note to sec. 47–2601.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2413, 47–2705.

§ 47–2603. Reimbursement of vendor for tax.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2413, 47–2604. 47–2703, 47–2704.

§ 47–2604. Rate of tax.

* * * * *

(b) On each sale of food for human consumption off the premises where such food is sold where the sales price is from 13 cents to 62 cents, both inclusive, 1 cent; on each such sale where the sales price is

from 63 cents to $1.12, both inclusive, 2 cents; and on each 50 cents of the sales price or fraction thereof of such sale in excess of $1.12, 1 cent.

* * * * *

(As amended Oct. 31, 1969, Pub. L. 91–106, title I, § 105, 83 Stat. 171.)

AMENDMENT

1969—Act Oct. 31, 1969, Pub. L. 91–106, § 105, amended subsection (b) by changing the bracket structure to which the tax rate is applicable.

EFFECTIVE DATE OF 1969 AMENDMENTS

See § 111 of Pub. L. 91–106, set out as a note to sec. 47–2601.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(398) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2413, 47–2603, 47–2703, 47–2704.

§ 47–2605. Exemptions.

Gross receipts from the following sales shall be exempt from the tax imposed by this chapter:

(a) Sales to the United States or the District or any instrumentality thereof except sales to national banks and Federal savings and loan associations.

(b) Sales to a State or any of its political subdivisions if such State grants a similar exemption to the District. As used in this subsection, the term "State" means the several States, Territories, and possessions of the United States.

(c) Sales to a semipublic institution: *Provided, however,* That such sales shall not be exempt unless (1) such institution shall have first obtained a certificate from the Assessor stating that it is entitled to such exemption, and (2) the vendor keeps a record of the sales price of each such separate sale, the name of the purchaser, the date of each such separate sale, and the number of such certificate.

(d) Sales of materials and services to the printing clerks of the majority and minority rooms of the House of Representatives for use in the operation of such rooms, and sales of materials and services made by such clerks in connection with the operation of such rooms.

(e) Sales of motor-vehicle fuels upon the sale of which a tax is imposed by chapter 19 of this title.

(f) Sales of property purchased by a utility or public-service company for use or consumption in furnishing a commodity or service: *Provided,* That the receipts from furnishing such commodity or service are subject to a gross-receipts or mileage tax in force in the District during or for the period of time covered by any return required to be filed by the provisions of this chapter.

(g) Sales of newspapers and publications of semipublic institutions as defined in paragraph 18 of section 47–2601.

(h) Casual and isolated sales by a vendor who is not regularly engaged in the business of making sales at retail.

(i) Sales of food, beverages, and other goods made to any person for use in the operation of the majority and minority cloakrooms of the House of Representatives and sales of such food, beverages, and other goods made by such person in connection with the operation of such cloakrooms.

(j) Sales of food or beverages of any nature if made in any car composing a part of any train or in any aircraft or boat operating within the District in the course of commerce between the District and a State.

(k) Sales of goods made pursuant to bona fide contracts entered into before May 27, 1949: *Provided,* That there is a contract in writing signed by the purchaser and vendor which imposes an unconditional liability on the part of the purchaser to buy the goods covered thereby at a fixed price and without escalator clause, and an unconditional liability on the part of the vendor to deliver a definite quantity of such goods at the contract price.

(*l*) Sales of natural or artificial gas, oil, electricity, solid fuel, or steam, directly used in manufacturing, assembling, processing, or refining.

(m) Sales which a State would be without power to tax under the limitations of the Constitution of the United States.

(n) Sale of motor vehicles and trailers which are subject to the provisions of title III of the District of Columbia Revenue Act of 1949.

(*o*) Sales of medicines, pharmaceuticals, and drugs made on prescriptions of duly licensed physicians and surgeons and general and special practitioners of the healing art.

(p) Sales of crutches, wheel chairs for the use of cripples and invalids, and, when designed to be worn on the person of the purchaser or user, artificial limbs, artificial eyes, and artificial hearing devices; sales of false teeth by a dentist and the materials used by a dentist in dental treatment; sales of eyeglasses, when especially designed or prescribed by an ophthalmologist, oculist, or optometrist for the personal use of the owner or purchaser; and sales of artificial braces and supports designed solely for the use of crippled persons.

(q) Sales of material to be incorporated permanently in any war memorial authorized by Congress to be erected on public grounds of the United States.

(r) Sales of textiles to persons who are engaged in the business of renting such textiles, if the essential part of such rental business includes recurring services of laundering or cleaning such textiles. (May 27, 1949, 63 Stat. 115, ch. 146, title I, § 128; May 18, 1954, 68 Stat. 118, ch. 218, title XIII, § 1305; Mar. 31, 1956, 70 Stat. 81, ch. 154, title II, § 204; July 3, 1957, 71 Stat. 276, Pub. L. 85–82, § 1; Sept. 30, 1966, 80 Stat. 856, Pub. L. 89–610, title III, § 302; Aug. 2, 1968, Pub. L. 90–450, title III, § 305(a), 82 Stat. 614; Oct. 31, 1969, Pub. L. 91–106, title I, § 106,

83 Stat. 171; Jan. 5, 1971, Pub. L. 91–650, title II, § 201(b), 84 Stat. 1932.)

REFERENCES IN TEXT

Title III of the District of Columbia Revenue Act of 1949, referred to in subsec. (n), is classified to subsec. (j) of section 40–603, to section 40–603–1, and as a note under section 40–603.

AMENDMENTS

1971—Section 201(b) of act Jan. 5, 1971, Pub. L. 91–650, added par. (r) to read as above set out.

1969—Act Oct. 31, 1969, Pub. L. 91–106, § 106 amended subsection (o) by striking out the words "whether or not".

1968—Section 305(a), Pub. L. 90–450, amended section by:

(1) Adding a new paragraph (d) as above set out in lieu of former par. (d) (1) and (2) which was repealed by Acts of May 18, 1954, 68 Stat. 118, § 1305, and Mar. 31, 1956, 70 Stat. 81, § 304(a);

(2) Amending par. (i) to read as above set out. The original text of par. (i) dealt with the sale of livestock poultry, seeds and other like products;

(3) Redesignating par. (r) as par. (q) in place of former par. (q) which had been repealed on Sept. 30, 1966. 80 Stat. 856. Pub. L. 89–610, § 302.

EFFECTIVE DATE OF 1969 AMENDMENTS

See § 111 of Pub. L. 91–106, set out as a note to sec. 47–2601.

EFFECTIVE DATE OF 1968 AMENDMENTS

See § 308 of Pub. L. 90–450, set out as a note to sec. 47–2601.

APPLICABILITY OF PARAGRAPH (d)

Section 305(b), Pub. L. 90–450, provided: "Paragraph (d) of such section 128 [47–2605(d)] added by paragraph (2) of subsection (a) of this section, shall apply with respect to sales of materials and services made on or after January 1, 1961."

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this Act) may be cited as the 'District of Columbia Revenue Act of 1969'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2413, 47–2607.

§§ 47–2606, 47–2607.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–2413, 47–2703, 47–2704.

§§ 47–2608 to 47–2610.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–2413, 47–2707.

§ 47–2611. Assumption or refund of tax by vendor unlawful—Penalties.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2413, 47–2709.

§§ 47–2612 to 47–2614.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–2413, 47–2710.

§ 47–2615. Secrecy of returns—Reciprocity.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 5–723.

§ 47–2616. Determination of deficiencies.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2413, 47–2617, 47–2713.

§ 47–2617. Refunds.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(399) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) with respect to prescribing regulations governing refunds, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2413, 47–2713.

§ 47–2618. Appeals.

(a) Any vendor or purchaser aggrieved by a final determination of tax or denial of an application for refund of any tax may appeal to the Superior Court in the same manner and to the same extent as set forth in sections 47–2403, 47–2404, 47–2407, 47–2410, and 47–2411.

(b) If it is determined by the Commissioner or by the Superior Court that any part of any tax which was assessed as a deficiency, and any interest thereon paid by the taxpayer, was an overpayment, interest shall be allowed and paid on the overpayment of tax at the rate of 4 per centum per annum from the date the overpayment was paid until the date of refund. (May 27, 1949, ch. 146, title I, § 141, 63 Stat. 120; July 29, 1970, Pub. L. 91–358, title I, § 161(d)(3), 84 Stat. 581.)

AMENDMENT

1970—Section 161(d)(3) of Act July 29, 1970, Public Law 91–358, amended section to read as above set out. For provisions of this section prior to this amendment, see 1967 edition of the code, and supplement III, thereto.

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2413, 47–2619, 47–2713.

§ 47–2619. Sales in bulk.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2413, 47–2713.

§ 47–2620. Rules and regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(400) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2413, 47–2713.

§ 47–2621. Additional powers of Assessor.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(401 and 402) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (c) and (d) to the District of Columbia Council, subject to the right of the Commissioner as

provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2413, 47–2713.

§ 47–2622. Examination of records and witnesses.

The Assessor, for the purpose of ascertaining the correctness of any return filed as required by this chapter, or for the purpose of making a return where none has been made, is authorized to examine any books, papers, records, or memoranda, or any person bearing upon the matters required to be included in the return and may summon any person to appear before him and produce books, records, papers, or memoranda, bearing upon the matters required to be included in the return and to give testimony or answer interrogatories under oath respecting the same, and the Assessor, or his duly authorized representative, shall have power to administer oaths to such person or persons. Such summons may be served by any member of the Metropolitan Police Department. If any person, having been personally summoned, shall neglect or refuse to obey the summons issued as herein provided, then in that event the Assessor, or the Deputy Assessor, may report that fact to the Superior Court of the District of Columbia, or one of the judges thereof, and said court or any judge thereof hereby is empowered to compel obedience to said summons to the same extent as witnesses may be compelled to obey the subpenas of that court. Any person in custody or control of any books, papers, records, or memoranda bearing upon the matters required to be included in such returns, who shall refuse to permit the examination by the Assessor or any person designated by him of any such books, papers, records, or memoranda, or who shall obstruct or hinder the Assessor or any person designated by him in the examination of any books, papers, records or memoranda, shall upon conviction thereof be fined not more than $500 or imprisoned for not more than six months, or both, for each offense. (May 27, 1949, 63 Stat. 122, ch. 146, title I, § 145; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(52), 84 Stat. 573.)

AMENDMENT

1970—Section 155(c)(52) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2413, 47–2713.

§ 47–2623. Certificate of registration.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2413, 47–2712.

§ 47–2624. Penalties and interest.

(a) Any person who fails to file a return, who files a false or incorrect return, or who fails to pay the tax to the District within the time required by this chapter shall be subject to a penalty of 5 per centum of the amount of tax due if the failure is for not more than one month, with an additional 5 per centum for each additional month or fraction thereof during which such failure continues, not to exceed 25 per centum in the aggregate; plus interest at the rate of 1 per centum of such tax for each month or fraction thereof during which such failure continues; but the Commissioner may, if he is satisfied that the delay was excusable, waive all or any part of the penalty. Unpaid penalties and interest may be collected in the same manner as the tax imposed by this chapter. The penalty and interest provided for in this section shall be applicable to any tax determined as a deficiency.

(b) The certificate of the Commissioner to the effect that a tax has not been paid, that a return has not been filed, or a registration certificate has not been obtained, or that information has not been supplied pursuant to the provisions of this chapter, shall be presumptive evidence thereof: *Provided,* That the presumptions created by this subsection shall not be applicable in criminal prosecutions. (May 27, 1949, 63 Stat. 123, ch. 146, title I, § 147; July 10, 1952, 66 Stat. 543, ch. 649, § 2(c); Oct. 31, 1969, Pub. L. 91–106, title I, § 107, 83 Stat. 171.)

AMENDMENT

1969—Act Oct. 31, 1969, Pub. L. 91–106, § 107, amended subsection (a) by providing that the penalty of 5 per centum shall apply to the first month of delinquency, with an additional penalty of 5 per centum for each additional month, with a maximum penalty of 25 per centum. Also substituted Commissioner for Assessor and omitted "Collector". In subsection (b) substituted "The certificate of the Commissioner" for "The certificate of the Collector or Assessor as the case may be".

EFFECTIVE DATE OF 1969 AMENDMENTS

See § 111 of Pub. L. 91–106, set out as a note to sec. 47–2601.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2413, 47–2713.

§§ 47–2625, 47–2626.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–2413, 47–2713.

§ 47–2627. Prosecutions.

All prosecutions under this chapter shall be brought in the Superior Court of the District of Columbia on information by the Corporation Counsel of the District in the name of the District of Columbia. (May 27, 1949, 63 Stat. 124, ch. 146, title I, § 150; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2413, 47–2713.

§§ 47–2628, 47–2629.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–2413, 47–2713.

Chapter 27.—COMPENSATING-USE TAX

CHAPTER REFERRED TO IN OTHER SECTIONS

This chapter is referred to in section 47–2601.

§ 47–2701. Definitions.

1. (a) "Retail sale", "sale at retail", and "sold at retail" means all sales in any quantity or quantities of tangible personal property, whether made within or without the District, and services, to any person for the purpose of use, storage, or consumption, within the District, taxable under the terms of this chapter. These terms shall mean all sales of tangible personal property to any person for any purpose other than those in which the purpose of the purchaser is to resell the property so transferred in the form in which the same is, or is to be, received by him, or to use or incorporate the property so transferred as a material or part of other tangible personal property to be produced for sale by manufacturing, assembling, processing, or refining. For the purpose of the tax imposed by this chapter, these terms shall include, but shall not be limited to, the following:

* * * * *

(4) The sale or charges for possession or use of any article of tangible personal property granted under a lease or contract, regardless of the length of time of such lease or contract or whether such lease or contract is oral or written; in such event for the purposes of this chapter, such lease or contract shall be considered the sale of such article and the tax shall be computed and paid by the vendor upon the rental paid: *Provided, however,* That the gross proceeds from the rental of films, records, or any type of sound transcribing to theaters and radio and television broadcasting stations shall not be considered a retail sale.

* * * * *

(6) The sale of or charges for admission to public events, including movies, musical performances, exhibitions, circuses, sporting events, and other shows or performances of any type or nature, except that any casual or isolated sale of or charge for admission made by a semipublic institution not regularly engaged in making such sales or charges shall not be considered a retail sale or sale at retail.

(7) The sale of or charges for the service of repairing, altering, mending, or fitting tangible personal property, or applying or installing tangible personal property as a repair or replacement part of other tangible personal property, whether or not such service is performed by means of coin-operated equipment or by any other means, and whether or not any tangible personal property is transferred in conjunction with such service.

(8) The sale of or charges for copying, photocopying, reproducing, duplicating, addressing, and mailing services and for public stenographic services.

(9) The sale of or charges for the service of laundering, dry cleaning, or pressing of any kind of tangible personal property, except when such service is performed by means of self-service, coin-operated equipment.

(b) The terms "retail sale", "sale at retail", and "sold at retail" shall not include the following:

(1) Sales of transportation and communication services other than sales of local telephone service.

(2) Professional, insurance, or personal service transactions which involve sales as inconsequential elements for which no separate charges are made, except as otherwise provided in subsection 1(a) of this section.

(3) Sales of tangible personal property which property was purchased or acquired by a nonresident prior to coming into the District and establishing or maintaining a temporary or permanent residence in the District. As used in this subsection, the word "residence" means a place in which to reside and does not mean "domicle."

(4) Sales of tangible personal property which property was purchased or acquired by a nonresident person prior to coming into the District and establishing or maintaining a business in the District.

(5) The use or storage within the District of tangible personal property owned and held by a common carrier or sleeping-car company for use principally without the District in the course of interstate commerce, or commerce between the District and a State, in or upon, or as part of, any train, aircraft, or boat.

* * * * *

(As amended Aug. 2, 1968, Pub. L. 90–450, title III, § 306, 82 Stat. 615; Oct. 31, 1969, Pub. L. 91–106, title I, §§ 108, 109, 83 State. 171, 172; Jan. 5, 1971, Pub. L. 91–650, title II, § 201(c)(1), 84 Stat. 1932.)

AMENDMENTS

1971—Section 201(c)(1) of act Jan. 5, 1971, Pub. L. 91–650, repealed the second proviso in par. 1(a)(4) which read: "*Provided further,* That the gross proceeds from the rental of textiles, the essential part of which rental includes recurring service of laundering or cleaning thereof, shall not be considered a retail sale".

1969—Act Oct. 31, 1969, Pub. L. 91–106, § 108 amended subsection 1(a) by adding pars. (6) to (9) inclusive. Section 109 of the same act amended subsection 1(b) by striking out par. (1) redesignating par. (2) as par. (1) and par. (3) as (2) and by adding thereto at the end the words "except as otherwise provided in subsection (a) of this section" and by redesignating the existing pars. (4), (5) and (6) as pars. (3), (4) and (5) respectively. The stricken par. (1) read: "Sales of tickets for admission to places of amusement and sports."

1968—Section 306, Pub. L. 90–450, amended par. 1(b)(2) by adding to existing language the phrase, "other than sales of local telephone service."

EFFECTIVE DATE OF 1969 AMENDMENTS

See § 111 of Pub. L. 91–106, set out as a note to sec. 47–2601.

EFFECTIVE DATE OF 1968 AMENDMENTS

See § 308 of Pub. L. 90–450, set out as a note to sec. 47–2601.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91—650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

The enacting clause of act Aug. 2, 1968, Pub. L. 90–450, provided: That this Act [Amending sections 25–107, 25–115(a), 47–1567b(a), 47–1571a, 47–1574b, 47–1586f(a)(4), 47–1589(b), 47–2501a, 47–2601, 47–2602, 47–2605, 47–2701, and 47–2702 and enacting sections 31–1118 and 47–145] may be cited as the "District of Columbia Revenue Act of 1968."

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2413.

§ 47–2702. Imposition of tax.

Beginning on and after August 1, 1949, there is hereby imposed and there shall be paid by every vendor engaging in business in the District and by every purchaser a tax on the use, storage, or consumption of any tangible personal property and services sold or purchased at retail sale. The rate of tax imposed by this section shall be 4 per centum of the sales price of such tangible personal property or services, except that—

(1) the rate of tax shall be 2 per centum of the sales price of (A) sales of food for human consumption off the premises where such food is sold, (B) sales of the services described in paragraph (9) of section 47–2701, 1(a) of this chapter, (C) sales of medicines, pharmaceuticals, and drugs not made on prescriptions of duly licensed physicians, surgeons, or other general or special practitioners of the healing art, and (D) charges for rental of textiles if the essential part of the rental includes recurring service of laundering or cleaning of the textiles;

(2) the rate of tax shall be 5 per centum of the sales price of sales of any room or rooms, lodgings, or accommodations, furnished to transients by any hotel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients; and

(3) the rate of tax shall be 5 per centum of the sales price of sales of (A) spiritous or malt liquors, beer, and wines, and (B) food for human consumption other than off the premises where such food is sold.

(May 27, 1949, 63 Stat. 126, ch. 146, title II, § 212; May 18, 1954, 68 Stat. 118, ch. 218, title XIII, § 1307; Mar. 2, 1962, 76 Stat. 10, Pub. L. 87–408, § 102; Aug. 2, 1968, Pub. L. 90–450, title III, § 307, 82 Stat. 615; Oct. 31, 1969, Pub. L. 91–106, title I, § 110, 83 Stat. 172; Jan. 5, 1971, Pub. L. 91–650, title II, § 201(c)(2), 84 Stat. 1932.)

AMENDMENTS

1971—Section 201(c)(2) of act Jan. 5, 1971, Pub. L. 91–650, amended clause (1) by striking out "and" immediately preceding "(C)" and by striking out the semicolon and inserting in lieu thereof the following: ", and (D) charges for rental of textiles if the essential part of the rental includes recurring service of laundering or cleaning of the textiles;".

1969—Act Oct. 31, 1969, Pub. L. 91–106, § 110 amended section by striking out the last sentence and inserting in lieu a new sentence as above set out. The sentence prior to this amendment read as follows: "The rate of the tax imposed by this section shall be 4 per centum of the sales price of the tangible personal property or services rendered or sold, except that the rate of tax with respect to sales of food for human consumption off the premises where such food is sold shall be 1 per centum of the sales price of such sales."

1968—Section 307, Pub. L. 90–450, amended the last sentence of this section to read as set out in the 1969 amendment note above. The result of the amendment was an increase in tax rate from 3 to 4 percent and some rearrangement of language.

EFFECTIVE DATE OF 1969 AMENDMENTS

See § 111 of Pub. L. 91–106, set out as a note to sec. 47–2601.

EFFECTIVE DATE OF 1968 AMENDMENTS

See § 308 of Pub. L. 90–450, set out as a note to sec. 47–2601.

SEPARABILITY, AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–650

See secs. 801–803 of act Jan. 5, 1971, Pub. L. 91–650, set out as a note under § 47–2501a.

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2413.

§§ 47–2703 to 47–2707.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 47–2413.

§ 47–2708. Surety bonds may be required.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(403) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to requiring vendors to file bond, determining the sureties necessary, and the duration of the bond, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2413.

§§ 47–2709, 47–2710.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 47–2413.

§ 47–2711. Monthly returns to be filed—Content and form—Payment of tax.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(404 and 405) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and

other functions of the Board of Commissioners, under subsections (a) and (b) in the particulars specified in pars. 404 and 405, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of the Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2413.

§§ 47–2712, 47–2713.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 47–2413.

Chapter 28.—CIGARETTE TAX

§ 47–2801. Definitions.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(406) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (g) to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 47–2802. Imposition of tax.

(a) There shall be levied, collected, and paid on all cigarettes sold in the District by licensed wholesalers, licensed retailers, or by licensed vending-machine operators, to consumers, a tax at the rate of 4 cents on each twenty cigarettes or fractional part thereof, such tax to be levied, collected, and paid once only on cigarettes sold as aforesaid.

* * * * *

(As amended Oct. 31, 1969, Pub. L. 91–106, title III, § 301, 83 Stat. 173.)

AMENDMENT

1969—Act Oct. 31, 1969, Pub. L. 91–106, § 301, amended subsection (a) by increasing the tax from 3 to 4 cents.

EFFECTIVE DATE OF 1969 AMENDMENT; APPLICABILITY TO STOCK HELD PRIOR TO EFFECTIVE DATE; STATEMENTS; RECORDS OF INVENTORIES; PUNISHMENT FOR VIOLATIONS

Section 302 of act Oct. 31, 1969, Pub. L. 91–106, title III, provided:

(a) Except as otherwise provided, the amendment made by section 301 shall apply with respect to cigarette tax stamps purchased on or after the effective date of this title, which shall be the first day of the first month which begins on or after the thirtieth day after the date of the enactment of this Act. [Oct. 31, 1969.]

(b) In the case of cigarette tax stamps which have been purchased prior to the effective date of this title and which on such date are held (affixed to a cigarette package or otherwise) by a wholesaler, retailer, or vending machine operator, licensed under the District of Columbia Cigarette Tax Act, such licensee shall pay to the Commissioner (in accordance with subsection (c)) an amount equal to the difference between the amount of tax represented by such tax stamps on the date of their purchase and the amount of tax which an equal number of cigarette tax stamps would represent if purchased on the effective date of this title.

(c) Within twenty days after the effective date of this title, each such licensee (1) shall file with the Commissioner a sworn statement (on a form to be prescribed by the Commissioner) showing the number of such cigarette tax stamps held by him as of the beginning of the day on which this title becomes effective or, if such day is a Sunday, as of the beginning of the following day, and (2) shall pay to the Commissioner the amount specified in subsection (b).

(d) Each such licensee shall keep and preserve for the twelve-month period immediately following the effective date of this title the inventories and other records made which form the basis for the information furnished to the Commissioner on the sworn statement required to be filed under this section.

(e) For purposes of this section, a tax stamp shall be considered as held by a wholesale, retailer, or vending machine operator if title thereto has passed to such wholesaler, retailer, or operator (whether or not delivery to him has been made) and if title to such stamp has not at any time been transferred to any person other than such wholesaler, retailer, or operator.

(f) A violation of the provisions of subsection (b), (c), or (d) of this section shall be punishable as provided in section 611 of the District of Columbia Cigarette Tax Act (D.C. Code, sec. 47–2810).

AUTHORITY OF COMMISSIONER AND COUNCIL, DELEGATION OF FUNCTIONS, AND SAVINGS PROVISIONS OF PUB. L. 91–106

See secs. 804 and 805 of act Oct. 31, 1969, Pub. L. 91–106, set out as a note under § 47–2501a.

SHORT TITLE

The enacting clause of act Oct. 31, 1969, Pub. L. 91–106 provided: "That this Act (classified to this and other sections of titles 1 App., 25, 40 and 47 of the D.C. Code. See tables for complete classification of this act) may be cited as the 'District of Columbia Revenue Act of 1969'."

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(407 to 410) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (c), (d), (h) and (i) in the particulars described in pars. 407 to 410, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 47–2805. Types of licenses.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(411, 412 and 413) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsections (A), (B) and (C)(3) in the particulars described in pars. 411, 412 and 413, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 47–2806. Period of licenses—Suspensions and revocations.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(414) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to fixing by regulation periods for which licenses shall remain in effect, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 47–2808. Administration—Rules and regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(415) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section with respect to making rules and regulations, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

§ 47–2809. Personnel and expenses authorized.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

§ 47–2810. Violations—Penalties—Prosecutions.

Whoever violates any provision of this chapter for which no specific penalty is provided, or any of the rules and regulations promulgated under the authority of this chapter, shall be punished by a fine of not more than $1,000 or by imprisonment for not longer than one year, or by both such fine and imprisonment, in the discretion of the court. Prosecutions for violations of this chapter shall be on information filed in the Superior Court of the District of Columbia by the Corporation Counsel or any of his Assistants. (May 27, 1949, 63 Stat. 139, ch. 146, title VI, § 611; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, §§ 155(a), 161(d)(1), 84 Stat. 570, 581.)

AMENDMENTS

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

Section 161(d)(1) of Act July 29, 1970, Public Law 91–358 amended section by striking out ", except for such violations as are felonies, and prosecutions for such violations as are felonies shall be by the United States attorney in and for the District of Columbia, or any of his assistants".

EFFECTIVE DATE OF 1970 AMENDMENTS

See note preceding section 11–101.

EFFECTIVE DATE

Section effective on the first day of the first month succeeding the sixtieth day after May 27, 1949, see note under § 47–2801.

CHANGE OF NAME

Act July 8, 1963, § 1, substituted "District of Columbia Court of General Sessions" for "municipal court for the District of Columbia". Said section 1 superseded act Oct. 23, 1962, 76 Stat. 1171, Pub. L. 87–873, § 1, which contained identical provisions.

§ 47–2811. Redemption of cigarette or alcoholic-beverage tax stamps.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(416) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under subsection (a) with regard to prescribing regulations respecting refunds or allowances, to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

Chapter 29.—ADMISSION TO LICENSED PLACES—POSTING OF PRICE SCALE

§§ 47–2901, 47–2902.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 47–2903, 47–2904.

§ 47–2903. Increase of penalty provisions in section 47–2901.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2902, 47–2904.

§ 47–2904. Recovery of fine—Payment of moiety.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2902.

§ 47–2905. Posting of price scale.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2906, 47–2907.

§ 47–2906. Failure to post price scale—Penalty.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2907.

§§ 47–2908, 47–2909.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 47–2911.

§ 47–2910. Proprietors or keepers of licensed restaurants, eating-houses, bar-rooms, sample-rooms, ice-cream saloons, or soda fountains required to serve well-behaved persons at common prices.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–2909, 47–2911.

§ 47–2911. Failure to post or file price list—Charging other or greater price—Failure to serve any well-behaved person—Penalty—Enforcement.

If the proprietor or proprietors, keeper or keepers, of any place or establishment, as aforesaid, shall neglect or refuse to put up printed cards or papers of prices as provided for in section 47–2908, or shall refuse to send a copy or duplicate to the Assessor [Register,] as provided in section 47–2909 or shall place or cause to be placed on said card or paper, or permit to be placed thereon any price or prices other or greater than that for which any article or thing is, or may be, usually and commonly sold or furnished by him, her, or them, or different from or more than is usually or commonly demanded or received therefor by him, her or them, or by his, her, or their authority or direction, or shall demand or receive in any manner, or under any circumstances, or for any reason or pretence, in person or by any employee or agent, from any person or persons aforesaid, any sum or prices different or greater than is contained on said cards or papers, or than is usually and commonly asked or received for any article or thing kept for sale as aforesaid, or shall refuse or neglect, in person or by his, her, or their employee or agent, directly or indirectly, to accommodate any well-behaved and respectable person as aforesaid in his, her, or their restaurant, eating-house, bar-room, sample-room, ice-cream saloon, or soda-fountain room, or shall refuse or neglect to sell at the common and usual prices aforesaid in and at his, her, or their restaurant, eating-house, bar-room, sample-room, ice-cream saloon, or soda-

fountain room, to any such person or persons therein at said prices, any article or thing kept therein and in the room or rooms in which such articles or things are ordinarily sold and served or allowed to be eaten or drank, or shall at any time or in any way or manner, or under any circumstances, or for any reason, cause, or pretext, fail, decline, object, or refuse to treat any person or persons aforesaid as any other well-behaved and respectable person or persons are treated at said restaurant, eating-house, bar-room, sample-room, ice-cream saloon, or soda-fountain room, he, she, or they, on conviction of a disregard or violation of any provision, regulation, or requirement of sections 47–2908, 47–2909, 47–2910, and 47–2911 or any part of sections 47–2908, 47–2909, 47–2910, and 47–2911 contained, be fined one hundred dollars, and forfeit his, her, or their license; and it shall not be lawful for any officer of the District to issue a license to any person or persons, or their agent or agents, whose license may be forfeited under the provisions of sections 47–2908, 47–2909, 47–2910, and 47–2911 for one year after such forfeiture: *Provided,* That the provisions of sections 47–2908, 47–2909, 47–2910, and 47–2911 shall be enforced by information in the Superior Court of the District of Columbia, filed on behalf thereof by its proper attorney or attorneys, subject to appeal to the District of Columbia Court of Appeals in the same manner as is now or may be hereafter provided for the enforcement of the District fines and penalties under ordinances and law. (3 Leg. Assem., June 26, 1873, ch. 46, § 4; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

CODIFICATION

The "District of Columbia Court of Appeals" was substituted for "Criminal Court of the District of Columbia", the latter being an obsolete term. See revision note under § 11–502 (1967 ed.), relating to the United States District Court for the District of Columbia. The "Criminal Court of the District of Columbia", the term used in this section at the time of its enactment, was then a "special term" of the Supreme Court of the District of Columbia, now the District Court. The District of Columbia Court of Appeals, established as the "Municipal Court of Appeals for the District of Columbia" by act Apr. 1, 1942, 56 Stat. 194, ch. 207, § 6, now has jurisdiction of appeals from orders and judgments of the Superior Court of the District of Columbia, referred to in this section. See § 11–721.

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–2909.

Chapter 30.—CLOSING-OUT SALES

Sec.
47–3008. Jurisdiction of Superior Court to enjoin violations of the provisions of this chapter.

§ 47–3002. Closing-out sales prohibited without a license—Application for license to be in writing—License fee—Bond—Records—Penalty.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 47–3003, 47–3004.

§ 47–3005. Continuation of sale beyond termination date prohibited—Extension of termination date—Continuation of business at new location prohibited.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 47–3009.

§ 47–3008. Jurisdiction of Superior Court to enjoin violations of the provisions of this chapter.

Upon complaint of any person, the Superior Court of the District of Columbia shall have jurisdiction in equity to restrain and enjoin any act forbidden or declared illegal by any provisions of this chapter. (Sept. 1, 1959, 73 Stat. 451, Pub. L. 86–219, § 8; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(53), 84 Stat. 573.)

AMENDMENT

1970—Section 155(c)(53) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

§ 47–3009. Regulations.

TRANSFER OF FUNCTIONS TO DISTRICT OF COLUMBIA COUNCIL

Section 402(417) of Reorg. Plan No. 3 of 1967, effective November 3, 1967, transferred the regulatory and other functions of the Board of Commissioners, under this section to the District of Columbia Council, subject to the right of the Commissioner as provided by section 406 of the Plan. For provisions establishing the District of Columbia Council, see section 201 of Reorganization Plan No. 3 of 1967, set out in the appendix to title 1.

TITLE 48.—TRADE-MARKS AND TRADE NAMES

Chapter 2.—REGISTRATION OF MILK CONTAINERS

Sec.
48–205. Proceeding in Superior Court to ascertain violations—Search warrant.

§§ 48–201 to 48–204.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 48–205 to 48–211.

§ 48–205. Proceeding in Superior Court to ascertain violations—Search warrant.

Whenever any person who has registered milk bottles, cans, crates, or other containers in accordance with the provisions of section 48–201 shall by himself or his agent make oath before the clerk of the Superior Court of the District of Columbia that he has reason to believe, and does believe, that any of his registered milk bottles, cans, crates, or other containers are being filled, used, bought, trafficked in, held, sold, offered for sale, broken, injured, or destroyed within the District of Columbia contrary to the provisions of sections 48–201 to 48–211, inclusive, by any person without the written consent of the registrant the judge of the Superior Court of the District of Columbia to whom said complaint under oath is made may forthwith issue a search warrant directed to any police officer or other proper officer to search the premises whereon or wherein said registered milk bottles, cans, crates, or other containers are unlawfully held and may issue a warrant for the arrest of the person complained against; and if any one or more of such registered milk bottles, cans, crates, or other containers, or any parts of the same, shall be found upon the premises by the officer executing the said search warrant, he shall seize and take possession of all such registered milk bottles, cans, crates, or other containers, or parts thereof, and shall cause the same to be brought before the judge of the Superior Court of the District of Columbia, who shall award the said registered milk bottles, cans, crates, and other containers to the person entitled to the same. (July 3, 1926, 44 Stat. 810, ch. 737, § 5; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CROSS REFERENCE

Search warrants, generally, see §§ 23–521 to 23–525.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48–201, 48–204, 48–206 to 48–211.

§§ 48–206 to 48–209.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in sections 48–201, 48–204, 48–205, 48–207, 48–208.

§ 48–210. Prosecutions—Penalties.

The violation of any of the provisions of sections 48–201 to 48–211 inclusive, shall be a misdemeanor, and prosecutions for violations of sections 48–201 to 48–211 inclusive, shall be in the Superior Court of the District of Columbia. Upon conviction of a violation of the provisions of sections 48–201 to 48–211 inclusive, the penalty shall be a fine of not more than $50 for the first offense and a fine of not more than $100 for the second and each subsequent offense. (July 3, 1926, 44 Stat. 811, ch. 737, § 10; Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Section 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CROSS REFERENCE

Criminal penalty for altering or imitating trade marks, see § 22–1402.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48–201 to 48–209, 48–211.

§ 48–211. Injunctive relief.

Whenever any person who has registered milk bottles, cans, crates, or other containers as herein provided shall have, upon complaint under oath, prosecuted any other person for violation of the provisions of sections 48–201 to 48–211 inclusive in the use, handling, holding, filling, selling, offering for sale, buying, trafficking in, breaking, or destroying of such registered milk bottles, cans, crates, or other containers and said other persons shall have been convicted on three occasions at least for the said unlawful use, handling, holding, filling, selling, offering for sale, buying, trafficking in, breaking, or destroying of said registered milk bottles, cans, crates, or other containers, then the said registrant of said milk bottles, cans, crates, or other containers shall be entitled, upon making complaint to a judge of the Superior Court of the District of Columbia, to have issued an injunction directed to said violator enjoining him from further illegal use, handling, holding, filling, selling, offering for sale, buying, trafficking in, breaking, or destroying of said registered milk bottles, cans, crates, or other containers.

(July 3, 1926, 44 Stat. 811, ch. 737, § 11; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32 (a), (b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(54), 84 Stat. 573.)

CODIFICATION

The phrase "holding an equity court" has been omitted as obsolete.

AMENDMENT

1970—Section 155(c)(54) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

Chapter 3.—REGISTRATION OF CONTAINERS FOR BEVERAGES COMPOSED PRINCIPALLY OF MILK

Sec.
48–305. Superior Court to issue warrant on complaint of violation.

§ 48–302. Registration authorized—Publication.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in sections 48–301, 48–303, 48–305.

§§ 48–303, 48–304.

SECTIONS REFERRED TO IN OTHER SECTIONS

These sections are referred to in section 48–301.

§ 48–305. Superior Court to issue warrant on complaint of violation.

Upon complaint of any person who has complied with section 48–302, or of his agent, to the Superior Court of the District of Columbia, or one of the judges thereof, that any person within the District of Columbia is guilty of the violation of any provision of this chapter, the said court or judge may issue a search warrant to discover and obtain such vessels as aforesaid and their contents, and may also cause to be brought before the said court or judge the person so belived to be guilty, or his agent or employee, in whose possession or upon whose wagon or premises any such vessel or vessels may be found; and any such person, agent, or employee found guilty of a violation of any of the provisions of this chapter shall be punished as aforesaid, and the said court or judge shall also order the property taken upon any such search warrant to be delivered to its owner. (Mar. 3, 1901, ch. 854, § 878e, as added Feb. 27, 1907, 34 Stat. 1007, ch. 2086, and amended Apr. 1, 1942, 56 Stat. 190, ch. 207, § 1; July 8, 1963, 77 Stat. 77, Pub. L. 88–60, § 1; July 29, 1970, Pub. L. 91–358, title I, § 155(a), 84 Stat. 570.)

AMENDMENT

1970—Sesction 155(a) of Act July 29, 1970, Public Law 91–358 amended section by striking out "District of Columbia Court of General Sessions" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

CROSS REFERENCE

Search warrants, generally, see §§ 23–521 to 23–525.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 48–301.

§ 48–307. Actions in tort permissible.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 48–301.

Chapter 4.—REGISTRATION OF LABOR UNION LABELS

§ 48–401. Adoption of label authorized—Registration—Assignment prohibited.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 48–402.

§ 48–402. Use of registered label restricted.

No person shall in any way use or display the label, brand, mark, name, or other character adopted by any such union or association as provided in section 48–401 without the consent or authority of such union or association; or counterfeit or imitate any such label, brand, mark, name, or other character, or knowingly sell, dispose of, keep, or have in his possession with intent to sell or dispose of any goods, wares, merchandise, or other products of labor, upon which any such counterfeit or imitation is attached, affixed, printed, stamped, or impressed, or knowingly sell, dispose of, keep, or have in his possession with intent to sell or dispose of any goods, wares, merchandise, or other products of labor contained in any box, case, can, or package, to which or on which any such counterfeit or imitation is attached, affixed, printed, painted, stamped, or impressed. If copies of such device have been filed, the union or association may maintain an action in the Superior Court of the District of Columbia to enjoin the manufacture, use, display, or sale of counterfeit or colorable imitations of such device, or of goods bearing the same, or the unauthorized use or display of such device or of goods bearing the same, and the court may restrain such wrongful manufacture, use, display, or sale, and every unauthorized use or display by others of the genuine devices so registered and filed, if such use or display is not authorized by the owner thereof, and may award to the plaintiff such damages resulting from such wrongful manufacture, use, display, or sale as may be proved, together with the profits derived therefrom. (Feb. 18, 1932, 47 Stat., 50, ch. 47, § 2; June 25, 1936, 49 Stat. 1921, ch. 804; June 25, 1948, 62 Stat. 991, ch. 646, § 32(b); May 24, 1949, 63 Stat. 107, ch. 139, § 127; July 29, 1970, Pub. L. 91–358, title I, § 155(c)(55), 84 Stat. 573.)

AMENDMENT

1970—Section 155(c)(55) of Act July 29, 1970, Public Law 91–358, amended section by striking out "United States District Court for the District of Columbia" and inserting in lieu thereof "Superior Court of the District of Columbia".

EFFECTIVE DATE OF 1970 AMENDMENT

See note preceding section 11–101.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 48–403.

TITLE 49.—COMPILATION AND CONSTRUCTION OF CODE

Chapter 1.—GENERAL PROVISIONS

§ 49–111. Disposition of compilation of laws affecting District of Columbia.

TRANSFER OF FUNCTIONS TO COMMISSIONER

See § 401 of Reorg. Plan No. 3 of 1967, eff. Nov. 3, 1967, set out in the appendix to title 1. See also §§ 301 and 503 of the Plan.

Chapter 3.—LAWS REMAINING IN FORCE

§ 49–301. Common law, principles of equity and admiralty, and Acts of Congress to remain in force.

The common law, all British statutes in force in Maryland on February 27, 1801, the principles of equity and admiralty, all general Acts of Congress not locally inapplicable in the District of Columbia, and all Acts of Congress by their terms applicable to the District of Columbia and to other places under the jurisdiction of the United States, in force in the District of Columbia on March 3, 1901, shall remain in force except in so far as the same are inconsistent with, or are replaced by, some provision of the 1901 Code. (Mar. 3, 1901, 31 Stat. 1189, ch. 854, § 1.)

NOTES TO DECISIONS

Construction

Statute providing that all consistent common-law and British statutes in force in Maryland at time of cession of District shall remain in force does not demand blind allegiance, particularly as to common law. *W. J. White* v. *A. Parnell* (1968, 397 F. 2d 709, 130 U.S. App. D.C. 148).

§ 49–303. Vestries.

SECTION REFERRED TO IN OTHER SECTIONS

This section is referred to in section 29–1003.

49–700 O—71——50

Parallel Reference Tables

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Date	Page	Chapter	Section	D.C. Code Supp.
1876				
Apr. 29	41	86	1	9–118a.

VOLUME 47

Date	Page	Chapter	Title	Section	D.C. Code Supp.
1932					
July 8		465		15A	22–3215a.

VOLUME 54

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1940					
July 11	748	579		1, 2	7–1501.

Volume 60

Date	Page	Chapter	Title	Section	D.C. Code Supp.
1946					
Aug. 7	882	779		20	31–721 note.
		779		21	31–739a.
		779		22	31–739c.
		779		23	31–739d.

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Date	Page	Chapter	Title	Section	D.C. Code Supp.
1947					
July 16		258	(ART I) XII	14	47–1586l–1.
		258	XII	15	47–1586m.
		258	XII	16	47–1586n.

Volume 69

Date	Page	Chapter	Title	Section	D.C. Code Supp.
1955					
Aug. 12		862		15	1–1115.
		862		16	1–1101 note.

Volume 70

Date	Page	Chapter	Title	Section	D.C. Code Supp.
1956					
Aug. 6		974		10	1–1211.

VOLUME 79

Date	Page	Pub. L.	Title	Section	D.C. Code Supp.
1965					
Aug. 10	484	89–117	III	317	5–717a(i).

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1966					
Oct. 29	1072	89–698	IV	401	9–118b.
Nov. 7		89–791	I	107	31–1607.
		89–791	I	108(a)	7 U.S.C. 329.
		89–791	I	108(b)	31–1608.
		89–791	I	109	31–1609.
		89–791	I	110	31–1610.
		89–791	I	111	31–1611.
		89–791	I	112	31–1612.

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1967					
May 25	20	90–19		3	5–717a.
	25	90–19		17	5–724.
June 28	81	90–33		1	1–906.
July 3	108	90–43		1	40–10[2](d).
July 7	122	90–53		1	30–120, 30–123.
July 28	134	90–57		101	9–126a.
	135	90–57		101	31–121.
Sept. 11	224	90–83		10(b)	1–311, Note Rep., 4–823, Note Rep., 31–1501, Note Rep.
	224	90–84		1	43–1621(b).
	225	90–84		2	43–1623.
Oct. 20	275	90–108		1(a)	9–118.
	276	90–108		1(b)	9–123.
	277	90–108		1(c)	9–125.
	277	90–108		1(d)	9–132.
	277	90–108		2	22–3111.
	278	90–108		3	9–118, 9–123. 9–125, 9–132, 22–3111 note.
Oct. 24	336	90–115		1	2–133.
	336	90–115		2(1)	2–308 note.
	336	90–115		2(2)	2–209 note.
	336	90–115		2(3)	2–309a.
	336	90–115		3	2–133, 2–308, 2–309, 2–309a note.
Nov. 3	339	90–120		1	1–320, 9–220(b), 47–2501a note.
	339	90–120	I	101	47–2501a.
	339	90–120	II	201	9–220(b).
	340	90–120	II	202	9–22o(f) Rep.
	340	90–120	III	301	1–320.
Nov. 8	405	90–132	II		31–1010a note.
	429	90–133	IV	403	11–341 note.
Nov. 13	440	90–134		7	1–263 note.
	440	90–134		10	4–501 note.
	441	90–134		12	1–243 note.
	441	90–134		15	9–501, 33–111 note.
Dec. 4	532	90–172		1	40–603.
	532	90–172		2	40–706.
	532	90–173		1	27–130.
Dec. 6	542	90–176		1(1)	5–723(b).
	542	90–176		1(2)	5–723(b).
	542	90–176		1(3)	5–723(b).
	543	90–176		1(4)	5–723(b).
	543	90–176		1(5)	5–723(c).
Dec. 8	544	90–178		1(1)	11–702(a).
	544	90–178		1(2)	11–703(c).
	545	90–178		1(3A)	11–705.
	545	90–178		1(3B)	Sec. Analysis to T. 11 ch 7.
	545	90–178		2(a)(b)	17–301(b).
Dec. 16	633	90–206	II	211(b)(c)(d)	4–823, 31–1501 note.
Dec. 18	659	90–212		1(a)	31–691.
	659	90–212		1(b)	31–692.
	659	90–212		1(c)	31–694.
Dec. 20	670	90–220		1	1–1422.
Dec. 26	728	90–223		1	25–137.
Dec. 27	734	90–226	I	101	4–140.
	734	90–226	II	201	24–301.
	735	90–226	III	301	4–140a.
	736	90–226	IV	401	22–703.
	736	90–226	V	501	22–3201.
	736	90–226	VI	601	22–501.
	736	90–226	VI	602	22–1801.
	737	90–226	VI	603	22–2901.
	737	90–226	VI	604	22–1513.
	737	90–226	VI	605	22–3202.
	737	90–226	VI	606	22–2001.
	739	90–226	VI	607	22–3105.
	739	90–226	VI	608	4–150a.
	740	90–226	VII	701	23–610.
	740	90–226	VII	702(a)	23–901.

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	741	90-226	VIII	801(b)	18 U.S.C. 5025.
	741	90-226	VIII	802	18 U.S.C. 4122.
	742	90-226	VIII	803(a)	15-714.
	742	90-226	VIII	803(b)	15-716.
	742	90-226	IX	901	22-1122.
	742	90-226	X	1001 to 1009	Temporary.
	743	90-226	XI	1101	4-140 etc. note.
	744	90-226	XI	1102	4-140 etc. note.
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	745	90-227		2	1-267.
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	747	90-231		1(3)	31-724.
	748	90-231		1(4)	31-725.
	748	90-231		1(5)	31-728.
	748	90-231		1(6)	31-729.
	750	90-231		1(7)	31-730.
	751	90-231		1(8)	31-733.
	751	90-231		1(9)	31-739a.
	751	90-231		1(10)	31-739c.

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Jan. 30	4	90-251		1	1-1202.
	4	90-251		2	1-1203.
	4	90-251		3	1-1208.
	4	90-251		4	1-1211.
Mar. 11	42	90-263		1	15-101.
	42	90-263		2	15-102.
	42	90-263		3	15-311.
	43	90-263		4(a)	15-101 and 15-102 notes.
	43	90-263		4(b)	15-311 note.
Mar. 27	53	90-274		Enac. Clause.	7-318 note.
	62	90-274		103(a)	13-701 Rep., 11-2301 Rep., 11-2302 Rep. in part, 11-2303 to 11-2305, 11-2307 to 11-2312, 7-231a Rep.
	62	90-274		103(b)	11-2306.
	63	90-274		103(c)	7-318.
	63	90-274		103(d)	16-1312.
	63	90-274		103(e)	16-1357.
	63	90-274		103(f)	22-1414.
	63	90-274		104	7-318 note.
April 19	98	90-290		1(1)	21-301.
	98	90-290		1(2)	21-302.
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April 22	101	90-292		1	31-101 note.
	101	90-292		2	31-101 note.
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	102	90-292		3(c)	31-101(b) Rep.
	102	90-292		3(d)	31-102 to 31-104a, 31-105, 31-108, 31-110, 31-112, 31-117.
	103	90-292		4(1)	1-1101.
	103	90-292		4(2)	1-1102.
	103	90-292		4(3)	1-1105.
	103	90-292		4(4)	1-1107.
	103	90-292		4(5)	1-1108.
	104	90-292		4(6)	1-1109.
	105	90-292		4(7)	1-1110.
	106	90-292		4(8)	1-1111.
	106	90-292		4(9)	1-1115, 1-1101 note.
	107	90-292		5	31-104b.
	107	90-292		6	1-1101 et seq. notes, 31-101 et seq. notes.
May 27	132	90-319		1	31-1501 note.
	132	90-319		2(1)	31-1501.
	135	90-319		2(2)	31-1501.
	138	90-319		2(3)	31-1532(a)(1).
	138	90-319		2(4)	31-1533(a).
	138	90-319		2(5)	31-1535(a).
	138	90-319		2(6)	31-1542(a).
	139	90-319		2(7)	31-1542(a).
	139	90-319		2(8)	31-1522(c).
	139	90-319		3	31-1501 note.
	140	90-319		4	31-1501 note.
	140	90-319		5	31-691.
	140	90-319		6	31-1532, 31-1533, 31-1535 notes.
	140	90-320		1(a)(b)	4-823.
	142	90-320		2	4-823d-2.
	144	90-320		3	4-832(a).
	144	90-320		4, 5	4-823 note.
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	238	90-351	VIII	1302	23-105.
	238	90-351	X	1501	22-2306.
	238	90-351	X	1502	22-2307.
June 20	241	90-354	I	1(107)	31-1607.
	241	90-354	I	1(108(a))	7-U.S.C. 329.
	241	90-354	I	1(108(b))	31-1608.
	241	90-354	I	1(109)	31-1609.
	242	90-354	I	1(110)	31-1610.
	242	90-354		2	31-1607, 31-1608 notes.
July 5	291	90-380		1	11-341(b).
	291	90-381		3	22-3414.
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	396	90-412		1(b)	5-418c.
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	407	90-417		101	31-121 note.
July 30	458	90-440		1	6-811 note.
	458	90-440		2	6-811.
	458	90-440		3	6-812.
	459	90-440		4	6-813.
	460	90-440		5	11-742(a).
	460	90-440		6	6-801 to 6-804 Rep.
	460	90-441		1	23-101a.
Aug. 1	520	90-448	V	501(c)	5-719a.
	567	90-448	XII	1201	35-1701 note.
	567	90-448	XII	1202	35-1701.
	568	90-448	XII	1203	35-1702.
	568	90-448	XII	1204	35-1703.
	569	90-448	XII	1205	35-1704.
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	571	90-448	XII	1207	35-1706.
	571	90-448	XII	1208	35-1707.
	571	90-448	XII	1209	35-1708.
	571	90-448	XII	1210	35-1709.
	572	90-448	XII	1211	35-1710.
	572	90-448	XII	1212	35-1711.
	572	90-448	XII	1213	11-742(a).
	607	90-448	XVII	1711	5-117.
Aug. 2	612	90-450	Enact. Clause.		47-2501 note.
	612	90-450	I	101	47-2501.
	612	90-450	II	201	47-1567b(a).
	612	90-450	II	202(a)	47-1571a.
	612	90-450	II	202(b)	47-1574b.
	612	90-450	II	203(a)	47-1586f(a)(4).
	612	90-450	II	203(b)	47-1589(b).
	613	90-450	II	204	47-1567b note.
	613	90-450	II	205	47-1567b note.
	613	90-450	III	301	47-2601, par. 7.
	613	90-450	III	302	47-2601, par. 14(a).
	614	90-450	III	303	47-2601, par. 14(b)(2).
	614	90-450	III	304	47-2602.
	614	90-450	III	305(a)	47-2605.
	615	90-450	III	305(b)	47-2605 note.
	615	90-450	III	306	47-2701, par. 1(b)(2).
	615	90-450	III	307	47-2702.
	615	90-450	III	308	47-2601 note.
	615	90-450	IV	401	31-1118.
	615	90-450	IV	402	47-145.
	616	90-450	IV	403	25-107.
	616	90-450	IV	404	25-115(a).
Aug. 3	618	90-452		1	24-521 note.
	618	90-452		2(a)	25-128.
	618	90-452		2(b)	4-143.
	618	90-452		3(a)	24-521 to 24-535.
	624	90-452		3(b)	25-111a.
	624	90-452		3(c)	24-514 Rep.
	624	90-452		4	24-521 note.
	628	90-455		1	1-804a.
	628	90-455		2	1-804b.
	629	90-455		3	1-804c.
	629	90-455		4	1-805, 1-806.
	629	90-455		5	1-807.
	629	90-455		6	1-804a note.
	629	90-455		7	1-804 Rep.
	630	90-455		8	1-804a note.
	630	90-455		9	1-804a note.
	631	90-457		1 to 6	32-301 note.
	633	90-458		1	6-1401.
	633	90-458		2	6-1402.
	633	90-458		3	6-1403.
	633	90-458		4	6-1404.
	634	90-458		5	6-1401 note.
	634	90-459		1	47-801 a-z.
	634	90-459		2	47-801 a-z note.
Aug. 8	662	90-467		1	35-410.
Aug. 9	686	90-470	IV	403	11-341 note.
Aug. 10	699	90-473		7	1-263 note.
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	699	90-473		12	1-243 note.
	700	90-473		15	9-501, 33-111.
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	828	90-495		23(e)(f)	7-136.
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	1150	90-587		4	1-823.
	1152	90-589		1	40-455(a).
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	1156	90-596	I	102	7-902 note.
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	1157	90-596	I	104	7-903.
	1157	90-596	I	105	7-904.
	1157	90-596	II	201	7-905.
	1158	90-596	II	202	7-906.
	1158	90-596	II	203	7-907.
	1158	90-596	III	301	7-901 Rep.
	1158	90-596	III	302	7-908.
	1159	90-596	III	303	7-909.
	1159	90-596	III	304	7-910.
	1159	90-596	III	305	7-911.
	1160	90-596	III	306	7-912.
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	1161	90-596	III	309	7-915.
	1162	90-596	III	310	7-916.
	1162	90-596	IV	401	7-917.
	1162	90-596	IV	402	7-918.
	1163	90-596	IV	403	7-919.
	1163	90-596	IV	404	7-920.
	1164	90-596	IV	405	7-921.
	1164	90-596	IV	406	7-922.
	1164	90-596	IV	407	7-923.
	1164	90-596	IV	408	7-924.
	1164	90-596	IV	409	7-925.
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